

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF TENNESSEE  
WESTERN DIVISION

HYDRAFACIAL, LLC,

Plaintiff,

vs.

NO. 2:24-CV-02480-SHL

AESTHETIC MANAGEMENT  
PARTNERS, LLC, et al.,

Defendant.

TRANSCRIPT OF  
PRELIMINARY INJUNCTION HEARING  
BEFORE THE

HONORABLE SHERYL H. LIPMAN, Chief District Judge

FRIDAY  
JULY 25, 2025

POLLY WARDLAW, CCR, LCR  
OFFICIAL REPORTER  
FOURTH FLOOR FEDERAL BUILDING  
MEMPHIS, TENNESSEE 38103

UNREDACTED TRANSCRIPT

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**FOR THE PLAINTIFF**

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FRIDAY

JULY 25, 2025

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The PRELIMINARY INJUNCTION hearing in this case began on the 25th day of July 2025, at 2:00 p.m. when and where evidence was introduced and proceedings were had as follows:

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**THE COURT:** Good afternoon. No one told me you traveled in large packs. I was not given that warning.

So when I went on the bench a little over 11 years ago, I did not want to admit to the first group of lawyers that tried a case in front of me that it was my first trial. I admitted it after the trial. It's been 11 years, so I don't mind admitting to you-all I haven't had a patent case before. This was a gift from Judge McCalla that I sent him a nice little present in return for.

But I've reviewed things, and I think I'm as up to speed as I can get, and I welcome hearing from you-all. Let's start by having everyone introduce yourselves for the record.

**MR. RAZAI:** Good afternoon, Your Honor. My name

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01:59:32 1 is Ali Razai. I'm from Morgan Lewis. I'm here on behalf  
01:59:34 2 of Plaintiff HydraFacial. With me is my partner,  
01:59:39 3 Benjamin Anger, and our client representative Mr. Paul  
4 Bokota. And then local counsel can probably introduce  
01:59:45 5 themselves.

01:59:45 6 **MR. VORDER-BRUEGGE:** Mark Vorder-Bruegge and  
7 Matt Lubozynski from Wyatt, Your Honor.

8 **THE COURT:** Never heard of them. Thank you.  
9 Welcome. We need you to move a mic in front of you or --

10 **THE COURT REPORTER:** Just push it up a little  
11 closer. Thank you.

12 **THE COURT:** Yeah. All right. And on the  
02:00:05 13 defense side?

02:00:05 14 **MR. RADER:** Thank you very much, Your Honor.  
02:00:15 15 I'm Michael Rader from Wolf Greenfield. I'm lead counsel  
02:00:19 16 for AMP, defendant. And with the Court's permission,  
02:00:23 17 we'd like to divide the responsibilities of it. So I'll  
02:00:26 18 just introduce our team if that's okay.

02:00:29 19 **THE COURT:** Sure.

02:00:31 20 **MR. RADER:** My co-counsel, Nicole Riccio, is  
02:00:35 21 going to be addressing the irreparable harm issue. I'm  
02:00:40 22 going to address the likelihood of success on the merits.  
23 Meaghan Luster is an associate in our Boston office of  
24 Wolf Greenfield. She's going to be addressing the  
02:00:50 25 remaining prongs: The balance, the hardships, and the

02:00:51 1 public interest.

02:00:53 2 And then in terms of witnesses, we have Mark Crosby,  
02:00:57 3 as our general counsel. He will be a witness today. We  
02:01:01 4 have our technical expert, Professor Alex Slocum, from  
02:01:04 5 MIT. And we have our client representative, Mr. Adrian  
02:01:11 6 Bishop, as the president of the company.

02:01:13 7 **THE COURT:** Very good. Thank you. I'm afraid I  
02:01:16 8 need to go back to who I assume is lead counsel for  
02:01:20 9 plaintiff. Tell me your name again.

02:01:21 10 **MR. RAZAI:** Your Honor, my name is Ali, A-L-I.  
02:01:23 11 Last name is Razai, R-A-Z-A-I.

02:01:27 12 **THE COURT:** I'm not sure why you are not on the  
02:01:30 13 docket, but we do not have you on the docket.

02:01:35 14 **MR. RAZAI:** Really? I am admitted pro hac and  
02:01:38 15 should be on the docket, Your Honor. I'm not sure why  
02:01:41 16 I'm not.

02:01:42 17 **THE COURT:** Well, I'll tell you that even after  
02:01:45 18 you're admitted you have to do a notice of appearance.

02:01:49 19 **MR. RAZAI:** I believe we have done that as well.  
02:01:52 20 Have we not?

02:01:52 21 **MR. VORDER-BRUEGGE:** I thought we did, Your  
02:01:54 22 Honor.

02:01:54 23 **THE COURT:** If you all would follow up on that  
02:01:58 24 immediately after this hearing. I'm looking at the  
02:02:04 25 docket and I don't --

02:02:04 1 **MR. RAZAI:** Absolutely. We'll make sure we get  
02:02:09 2 that done. My apologies, Your Honor.

02:02:13 3 **THE COURT:** Am I missing it? I don't think so.  
02:02:13 4 Okay. Let's proceed.

02:02:15 5 Do plaintiffs intend to offer live testimony today?

02:02:19 6 **MR. RAZAI:** Yes, Your Honor. With us we have  
02:02:22 7 Mr. Vipul Savsani who's a fact witness and submitted a  
02:02:26 8 declaration. And also we have Karl Leinsing, who is our  
02:02:27 9 mechanical engineering expert who also submitted a  
02:02:27 10 declaration. And we will put them on the stand so that  
02:02:38 11 if Your Honor has questions, and we will get some  
02:02:41 12 testimony from them as well.

02:02:42 13 **THE COURT:** Okay. All right, great. Well,  
02:02:45 14 let's proceed then.

02:02:46 15 **MR. RAZAI:** Your Honor, should I present from  
02:02:50 16 the lectern in the front; is that okay?

02:02:55 17 **THE COURT:** Yeah. Either here or the tall one.

02:02:57 18 **MR. RAZAI:** I'll go over here so I can connect  
02:03:01 19 the laptop straight. The clicky thingy, as I call it, is  
02:03:05 20 not operational.

02:03:06 21 **THE COURT:** Hate it when that happens.

02:03:48 22 **MR. RAZAI:** Your Honor, we have printouts of the  
02:03:52 23 slides as well that we can give counsel as well as the  
02:03:57 24 Court.

02:03:57 25 **THE COURT:** Certainly. Thank you. If you've

02:04:11 1 got an extra, give one to that gentleman over there who  
02:04:17 2 is just kind of hanging out there.

02:04:20 3 **MR. RAZAI:** Your Honor, just for context, the  
02:04:22 4 parties have been litigating this case for a while, but  
02:04:26 5 they were litigating it at the ITC. And at the ITC there  
02:04:31 6 were several depositions taken by Aesthetic Management  
02:04:36 7 Partners. I'll refer to them as AMP for today's  
02:04:41 8 proceedings. And so there's evidence that has been  
02:04:42 9 adduced and will be presented. The majority of evidence  
02:04:44 10 that Your Honor may not have seen in our opening slides  
02:04:47 11 are just in rebuttal to what was presented in the  
02:04:51 12 opposition, especially given that the majority of issues  
02:04:54 13 that were presented in the opposition are issues where  
02:04:58 14 the defendants have the burden of proof, not the  
02:05:00 15 plaintiff. And so there are just some issues on rebuttal  
02:05:03 16 that we will present.

02:05:06 17 But I want to kind of step back and talk about  
02:05:09 18 HydraFacial, and that will give a lot of context to a lot  
02:05:12 19 of the arguments that have been presented in the course  
02:05:15 20 of the preliminary injunction motion.

02:05:17 21 So HydraFacial started as Edge Systems in 1997 by  
22 Mr. William Cohen, who's on the left, and Roger Ignon.  
02:05:22 23 Roger Ignon is one of the inventors on the patents in  
02:05:25 24 suit. And they started the company to make smoke  
02:05:29 25 evacuators. And smoke evacuators basically were these

02:05:32 1 machines that were used in surgical centers to basically  
02:05:36 2 evacuate the smoke that's created through cauterization  
02:05:40 3 and other surgical procedures that are using heat or  
02:05:42 4 electricity.

02:05:44 5 In 2000 and -- or later on, after they founded the  
02:05:45 6 company, Mr. Ignon started to work in the field of  
02:06:01 7 microdermabrasion. Now, I don't know if Your Honor has  
02:06:01 8 familiarity with microdermabrasion, but basically it uses  
9 crystal or abrasive particles to be shot against the skin  
10 and resurfaces the skin and creates a youthful  
02:06:02 11 appearance. But it's not without drawbacks.

02:06:04 12 And this was the gold standard starting from the mid  
02:06:07 13 '80s up until maybe 2007, 8, for resurfacing and  
02:06:12 14 rejuvenating skin in various different settings.

02:06:15 15 Now, Mr. Ignon saw that there was a lot of drawbacks  
02:06:20 16 to microdermabrasion. Specifically, it was painful.  
02:06:23 17 You're basically sandblasting the face in a very dry  
18 environment. It was very messy because the sand would  
02:06:28 19 kind of get over the entire room, and it was unhealthy  
02:06:36 20 for the estheticians or whoever was applying it to be  
21 breathing in the sand.

22 It required a long recovery for the patient who was  
02:06:38 23 receiving it. And it caused red photosensitive,  
02:06:41 24 irritated skin. And the crystals themselves were  
02:06:44 25 harmful, like I said, not only to the esthetician, but to

02:06:56 1 the patient.

02:06:56 2 So right around 2004, Mr. Ignon had this great idea.  
3 He said, why don't we try to see if we can use the  
02:07:00 4 abrasive part on the actual handpiece. And what we could  
02:07:00 5 do is we could use serums to either infuse serums or use  
02:07:06 6 the serums to abrade skin in connection with a softer  
02:07:09 7 handpiece. And he created this prototype, and this  
8 prototype was the Medela 1.

02:07:14 9 And one of the things that we're going to hear about  
02:07:17 10 today is this alleged public use portion. That with this  
02:07:19 11 public use portion -- first of all, there was no public  
02:07:22 12 use. Anything that they did was experimental. But they  
02:07:25 13 were testing these various prototypes. And there's been  
02:07:27 14 no evidence, as we'll get into, as to what was used on  
02:07:31 15 various different test subjects at various different  
02:07:34 16 times.

02:07:35 17 So the first prototype was this Medela 1. It's a  
02:07:38 18 single container, and it had a handpiece. During the  
02:07:40 19 course of the development later on in 2004, Mr. Ignon  
02:07:44 20 kind of put on a couple of bottles and he attached some  
02:07:48 21 bottles. And this is a figure from Mr. Ignon's  
02:07:51 22 deposition where he drew those two bottles on there. And  
23 so now we're getting to let's see how it works for a  
24 couple of containers.

02:07:57 25 There was no console. There was a very rudimentary

02:07:59 1 crude prototype that he was using. And he added those on  
02:08:03 2 to see if he could use multiple bottles. One maybe to  
02:08:07 3 clean the skin and then another maybe to hydrate the skin  
02:08:10 4 or have it -- but to create the ability to perform  
02:08:12 5 multi-modal treatments on one patient during one  
02:08:17 6 procedure. Not so that you could have -- let's say my  
02:08:20 7 skin requires soap A and maybe Your Honor's skin requires  
02:08:24 8 soap B. It's not so that you could switch serums. It's  
9 so that during one use a patient could receive various  
02:08:30 10 different treatments to be able to either cleanse and  
02:08:33 11 moisturize or to abrade and clean and so on and so forth.  
02:08:37 12 But again, another prototype that Mr. Ignon tested at  
02:08:40 13 HydraFacial.

02:08:42 14 It wasn't until 2005 after the critical data, the  
02:08:46 15 patent that HydraFacial launched, its Tower system. And  
02:08:50 16 this Tower system, it basically revolutionized the  
02:08:56 17 industry. What do I mean by revolutionized the industry?

02:09:02 18 There is an entirely new field that was created  
02:09:07 19 after the entry of this machine which is called  
02:09:10 20 hydrodermabrasion. And effectively, it completely  
02:09:14 21 eliminated microdermabrasion as something that  
22 estheticians do. No one does it anymore because it's  
02:09:18 23 just so antiquated based on what was developed by Edge  
02:09:21 24 Systems and what became HydraFacial with this machine  
02:09:23 25 that was released in 2005.

02:09:25 1 This is from the deposition testimony of  
02:09:28 2 Misters Cohen and Ignon, each of whom testified, we  
02:09:34 3 created hydrodermabrasion. It never existed until they  
02:09:40 4 created it in 2005.

02:09:41 5 Let's look at some sales. The unit sales and  
02:09:44 6 revenues are some charts that were also presented. And I  
02:09:46 7 believe that these are all documents that were produced  
02:09:48 8 in the Aesthetic Management Partners litigation at the  
02:09:51 9 ITC.

02:09:52 10 You can see that the sales started out small, but as  
02:09:57 11 soon as people started understanding what this system was  
02:09:59 12 about, it caught fire. We're not talking about sales in  
02:10:00 13 like a million dollar, two-million-dollar range. The  
02:10:01 14 adoption was so fast once people caught on that we're now  
02:10:06 15 talking about sales in the 50 million a year, 100 million  
02:10:09 16 a year, 150 million a year, 200 million a year.

02:10:11 17 So what then culminated? In 2020, this company that  
02:10:18 18 two men started -- and they did work out of their garage.  
02:10:21 19 In 2020, they went public with a valuation of \$1.1  
02:10:25 20 billion. That was the enterprise valuation in 2020 at  
02:10:28 21 the public offering.

02:10:30 22 Now, looking at the net worldwide sales, we're  
02:10:34 23 talking about \$940 million that were from these machines.  
02:10:41 24 But what we have to understand -- and this kind of goes  
02:10:44 25 into the irreparable harm portion of it. You have a

1 machine. You place the machine in an esthetician's  
2 office.

02:10:53 3 That esthetician wants to be able to offer  
02:10:55 4 HydraFacial treatments. And to offer a HydraFacial  
02:10:55 5 treatment, you use the machine, you use these disposable  
02:10:59 6 tips, that are also part of the lawsuit here, not part of  
02:11:04 7 the preliminary injunction motion. Then you use serums.

8 These consumable sales actually make up almost half  
02:11:12 9 of -- actually more than half of HydraFacial's sales. So  
02:11:12 10 when you place a machine, that machine is going to be in  
02:11:15 11 operation for five to seven years, and you're going to  
02:11:18 12 continue that relationship with that customer placing  
02:11:27 13 serums, placing tips, and having that relationship go on  
02:11:28 14 for much longer than the period that you actually sell  
02:11:32 15 that machine.

02:11:33 16 **THE COURT:** You said the disposable tips are not  
02:11:35 17 part of the --

02:11:36 18 **MR. RAZAI:** They're not part of the preliminary  
02:11:38 19 injunction motion, Your Honor, but they're part of the  
02:11:41 20 lawsuit.

02:11:41 21 **THE COURT:** What about the serums?

02:11:43 22 **MR. RAZAI:** The serums are not part of the  
02:11:46 23 lawsuit, but they will be part of the conveyed sales that  
02:11:49 24 we will be asking for in damages, Your Honor.

02:11:53 25 **THE COURT:** All right.

02:11:53 1 **MR. RAZAI:** Now another aspect that we have to  
2 talk about is capacity. HydraFacial makes all of these  
02:11:59 3 machines in Long Beach, California, which is unheard of  
02:11:59 4 in this day and age. The facility is 105,000 square  
02:12:03 5 feet. And as Mr. Savsani has said in his declaration,  
02:12:09 6 they currently run -- basically their capacity is at a  
02:12:12 7 third. And you saw the number of units that -- the  
02:12:15 8 dollar amounts they're selling.

02:12:18 9 They could triple the amount of capacity easily  
02:12:20 10 taking in any sales made by Aesthetic Management Partners  
02:12:24 11 or any -- or every other infringer that we have accused  
02:12:27 12 of infringement or either following now or have settled  
02:12:30 13 with or have gotten verdicts against. Actually we're  
02:12:30 14 waiting for a verdict, but have gotten consent judgments,  
02:12:35 15 consent orders and various different settlement  
02:12:36 16 agreements agreeing to stop. We can take on all those  
02:12:39 17 sales. We can triple the capacity that we have and still  
02:12:42 18 have much more capacity left to just increase penetration  
02:12:46 19 of the market. So we're not going to have any kind of a  
02:12:48 20 situation where there's a lack of product in the  
02:12:51 21 marketplace.

02:12:52 22 So let's go through the patents. This is the 052  
02:12:57 23 Patent. And as you can see from the figure, this is one  
02:12:59 24 of those patents that actually is not good the third or  
02:13:03 25 fourth improvement. A lot of times people will invent

02:13:06 1 something and then for the next 20, 30, 40 years add a  
02:13:11 2 bell, add a whistle, and keep getting a patent.

02:13:13 3 These are the patents that created the industry. As  
02:13:13 4 you can see from the figures, Your Honor, this figure  
02:13:16 5 looks almost exactly like the model that was released in  
02:13:20 6 2005. And what does it claim?

02:13:23 7 The claim on the 052 Patent -- which actually  
02:13:27 8 there's no IPR instituted on this one. And I think for  
02:13:33 9 ease of the fact that we have limited time, and I'm sure  
02:13:33 10 Mr. Rader would like an opportunity to speak as well,  
02:13:36 11 we're going to talk about both, but I'm going to focus a  
02:13:39 12 little bit on the 052.

02:13:41 13 So the 052 Patent basically covers this giant list  
02:13:46 14 of things that was unique to HydraFacial and to Edge  
02:13:51 15 Systems at the time of filing. Basically it's a machine  
02:13:53 16 that includes a console. And the console we'll kind of  
02:13:55 17 go through in a second. It has a manifold. You have  
02:13:58 18 bottles that are a part of this manifold in a vacuum  
02:14:02 19 system. I'm talking about the patent now.

02:14:04 20 The vacuum gets actuated. Everything stirs from the  
02:14:09 21 vacuum. The vacuum line creates negative pressure that  
02:14:12 22 goes up to the handpiece. The handpiece goes on a  
02:14:17 23 patient's skin creating a closed loop. The handpiece has  
02:14:21 24 a skirt, goes on the skin. It pulls the skin -- draws  
02:14:23 25 the skin into the handpiece. And at the same time, it

02:14:27 1 acts on the containers.

02:14:29 2       Whichever container has a valve that's open, that's  
02:14:34 3 the container that goes into the manifold. From the  
02:14:34 4 manifold it goes -- a manifold is basically a structure  
02:14:36 5 that has multiple inlets and a single outlet in this  
02:14:41 6 context.

02:14:42 7       It goes into the manifold. It gets drawn from the  
02:14:44 8 manifold into the single supply conduit that goes to the  
02:14:45 9 handpiece. So that vacuum acts on the face. Pulls the  
02:14:49 10 serum out from the container into the handpiece and gets  
02:14:52 11 drawn against the skin.

02:14:54 12       As it gets drawn against the skin, if, for example,  
02:14:56 13 it's an abrading serum that works with the tip, that  
02:15:04 14 serum then abrades skin, and abraded skin along with that  
02:15:04 15 serum gets sucked into that same vacuum line that's been  
02:15:09 16 acting on the container, and that gets drawn into a waste  
17 container.

02:15:11 18       And then the user can select as they're -- as  
02:15:15 19 they're pulling that handpiece across the face, the user  
02:15:19 20 can select a second serum that now instead of abrading,  
02:15:19 21 maybe cleanses. So now that vacuum acts on a second line  
02:15:23 22 which is a cleansing fluid. The cleansing fluid will go,  
02:15:27 23 wash the skin, and again the excess serum gets sucked off  
02:15:32 24 back into the waste container.

02:15:33 25       You can then go into the hydrating. The great thing

02:15:34 1 about this machine is as the skin is getting pulled into  
02:15:38 2 the tip, it's opening the pores up. So now these serums  
02:15:42 3 are going directly into the second layer of the skin  
02:15:45 4 creating better hydration.

02:15:48 5 So during one procedure you can abrade, you could  
02:15:51 6 clean, you could hydrate, and you could do other things  
02:15:54 7 that would be beneficial to skin. That's the entire  
02:15:57 8 purpose of a multi-modal machine that HydraFacial made.  
02:16:03 9 And that's what's claimed in the 052 Patent. The 052  
02:16:07 10 Patent --

02:16:07 11 **THE COURT:** Let me add here that I think the one  
02:16:10 12 advantage I have in this case over Judge McCalla is I  
02:16:16 13 believe I've had one of these procedures before.

14 **MR. RAZAI:** Fantastic.

02:16:18 15 **THE COURT:** I suspect Judge McCalla has not.  
16 But I appreciate your description of what happens.

02:16:26 17 **MR. RAZAI:** Maybe as a thank you that you were  
02:16:27 18 sent this, you could send a gift certificate for a  
02:16:28 19 HydraFacial treatment.

02:16:28 20 **THE COURT:** That would be an appropriate gift.

02:16:30 21 **MR. RAZAI:** So the 287 Patent that we were  
22 talking about is broader than the 052 Patent. Whereas  
02:16:36 23 the 052 Patent claims a manifold and it claims liquids,  
02:16:38 24 the 287 Patent is more broadly directed to a collection  
02:16:42 25 lumen. Basically just saying it's a tube of some sort

02:16:45 1 that fluid can collect in. And the 287 Patent also is  
02:16:48 2 broadly directed to treatment material, not to liquids  
02:16:52 3 the way that the 052 Patent is.

02:16:55 4 This is the HydraFacial Tower. And we talked about  
02:16:59 5 the patent, but the patent works exactly the way that the  
02:17:03 6 product works. So here we have the fluid containers that  
02:17:06 7 we discussed, the manifold that it goes into. You have  
02:17:10 8 the handpiece and the vacuum pump that's internal to the  
02:17:13 9 console.

02:17:13 10 And then if you look at it in use, this is what I  
02:17:17 11 was talking about with respect to the handpiece. You  
02:17:19 12 have a closed loop where you have the vacuum going --  
02:17:23 13 with the arrows going away from the hand. That's  
02:17:26 14 creating a negative pressure. That negative pressure is  
02:17:28 15 not only acting on the fluid containers to bring serum up  
02:17:31 16 to the face of the skin, it's also moving spent particles  
02:17:35 17 and spent media away from the skin back into the waste  
02:17:39 18 container.

02:17:41 19 This is a map of the 052 Patent against Claim 1 to  
02:17:46 20 kind of see how that works. We've already gone through  
02:17:48 21 it, so there's no reason to really belabor it, but Your  
02:17:48 22 Honor has that slide if you'd like to kind of go through  
02:17:52 23 it in leisure.

02:17:55 24 Now, let's talk about AquaFirme XS system. This is  
02:18:05 25 AMP's machine. It works exactly the same. You have a

02:18:05 1 vacuum source inside the console. You have four fluid  
02:18:06 2 containers. You have various different treatment fluids  
02:18:10 3 for the ability to have multi-modal treatments in one  
02:18:16 4 procedure. Works exactly the same as the 052 Patent  
02:18:20 5 does.

02:18:20 6 It uses negative pressure in the vacuum to act on  
02:18:24 7 the handpiece. The handpiece uses infringing tips to  
02:18:29 8 create that closed circuit against the skin. That closed  
02:18:33 9 circuit then uses the vacuum to pull liquid and serum  
02:18:37 10 from the bottles to the face of a patient. As you  
02:18:40 11 abrade, it takes spent skin as well as material away from  
02:18:44 12 the face back into a waste container that is also located  
02:18:47 13 in the back of the machine. And you can see the back of  
02:18:50 14 the machine here in Slide 25 with the waste container.

02:18:54 15 With respect to the 052 Patent, there's only one  
02:18:57 16 argument that is made regarding infringement, and we'll  
02:19:01 17 get into that in a second. It has to do with the word  
02:19:06 18 "manifold".

02:19:06 19 The likelihood of success on infringement. Claim 1:  
02:19:09 20 The only real challenge limitation is they say, well, we  
02:19:13 21 don't have a manifold because the manifold can't control  
02:19:17 22 the flow of liquid. There's two critical issues with  
02:19:23 23 that.

02:19:23 24 First issue is that the claim doesn't require the  
02:19:26 25 manifold to control liquid. And second, even if it did,

02:19:30 1 the construction that valves can't be part of a manifold  
02:19:34 2 is expressly contrary to the teachings of the 052 Patent.  
02:19:38 3 And we'll get into that right now.

02:19:40 4 This is the manifold. And Professor Slocum -- who  
02:19:45 5 is here today, and you can ask him about this -- in his  
02:19:46 6 declaration he agreed that this structure is a manifold  
02:19:49 7 basically having multiple inlets and one outlet. This  
02:19:56 8 disagreement here is but because the valves are there,  
02:19:56 9 those valves control the flow of liquid, not the  
02:20:00 10 manifold.

02:20:00 11 But first of all, let's look at the claim language.  
02:20:05 12 The claim language said the manifold is configured to  
02:20:05 13 control. Meaning that you do something to the manifold  
02:20:08 14 to allow it to control the flow of liquid. So even if  
02:20:14 15 the manifold could not include valves, which is wrong,  
02:20:17 16 the fact that valves are put on the manifold configures  
02:20:21 17 that manifold to control the flow of liquid. That  
02:20:21 18 noninfringement argument falls apart right there based on  
02:20:25 19 the claim language.

02:20:26 20 But moreover, there is no reason that the word  
02:20:30 21 manifold can't encompass the valves. Looking at the  
02:20:34 22 evidence, the 052 Patent specification at Column 9, Line  
02:20:39 23 7 through 8 says: The electrically-controlled solenoid  
02:20:50 24 valve system may alternatively be located in the manifold  
02:20:55 25 system.

02:20:56 1 So patents have various embodiments. And when you  
02:20:56 2 have a claim, the claim has to respect all the  
3 embodiments provided. You can't create some artificial  
02:20:56 4 construction. You have to follow what the specification  
02:20:58 5 says.

02:20:59 6 So even if the manifold were required to include the  
7 valves to fit within the claim language -- which it  
02:21:06 8 doesn't because it has to just be configured to do  
02:21:07 9 that -- the patent specification says the manifold system  
10 can include valves.

02:21:07 11 So under both those -- or under each one of those  
02:21:12 12 independent arguments the only noninfringement argument  
02:21:16 13 that the defendants have completely falls apart.

02:21:29 14 Then we get into fluid communication. Fluid  
02:21:35 15 communication basically comes down -- and this is a  
02:21:37 16 different patent. So we've already talked about the 052  
02:21:38 17 Patent. That was the only noninfringement argument they  
02:21:42 18 had for that 052 Patent.

02:21:42 19 Again, there's no IPR instituted on the 052 Patent.  
02:21:44 20 That patent has already been adjudicated to be valid by  
02:21:48 21 at least one district court. And we'll get into the  
02:21:51 22 arguments that Aesthetic Management Partners made about  
02:21:58 23 that in a second as well.

02:21:59 24 But for the 287 Patent, the only noninfringement  
02:21:59 25 argument here is that fluid communication requires actual

liquid to be drawn from one place to the other. And when there's fluid communication between the handpiece and the vacuum, that requires liquid to go inside the vacuum.

Now, that's nonsensical in terms of operationally. You would never want liquid to go inside a vacuum. Fluid communication is merely the plumbing in a particular device to allow communication between them. That's a term of art. That doesn't mean liquid communication. The same way that your vacuum cleaner has fluid communication to the vacuum, like a wet shop vacuum, doesn't mean that that liquid goes into the vacuum. That means that there's communication, there's plumbing that will allow the passage of fluids, including gases. That has nothing to do with the fluid that's in these machines. And that's again presented on Slide 35.

Now, let's go to the issue of validity. The only arguments made for validity are pointing to the IPR and saying that's dispositive. It is not dispositive. First of all, the IPR only touches the 287 Patent and not the 052 Patent. Like we said, the 287 Patent is much broader than the 052.

But looking at the 287 Patent, there are several district court opinions that were presented that talked about IPRs. There's not a single bit of evidence in the record, nor can we find any, where those district courts

02:23:33 1 didn't do their own independent analysis of the  
02:23:37 2 invalidity arguments that were present.

02:23:39 3 But second, and more importantly, the only rule --  
02:23:43 4 the only law that is binding on this Court that's been  
02:23:46 5 presented is the federal circuit. And the federal  
02:23:49 6 circuit has never said that as a matter of law there's no  
02:23:53 7 preliminary injunction when an IPR has been instituted.  
02:23:58 8 In fact, when we look at the federal circuit, they have  
02:24:01 9 granted preliminary injunctions, upheld preliminary  
02:24:05 10 injunctions when there was an IPR instituted. But again,  
02:24:09 11 let's not lose sight of the fact that there's no IPR  
02:24:14 12 instituted on the 052 Patent.

02:24:18 13 **THE COURT:** Even if the IPR is not dispositive,  
02:24:21 14 I have to take it into account, don't I?

02:24:24 15 **MR. RAZAI:** Of course, Your Honor. You have to  
02:24:27 16 take it into account, but taking it into account means  
02:24:28 17 you've taken into account on the patent that it's been  
02:24:29 18 filed against.

02:24:30 19 **THE COURT:** Right.

02:24:30 20 **MR. RAZAI:** Not on a patent that has no IPR.  
02:24:35 21 There's two patents and two claims.

02:24:35 22 **THE COURT:** Understood.

02:24:36 23 **MR. RAZAI:** Right. But the reason why that's  
02:24:37 24 important, Your Honor, is there are no independent  
02:24:39 25 arguments made for the 052.

02:24:42 1                   **THE COURT:**   Okay.

02:24:43 2                   **MR. RAZAI:**   Now let's look at the actual IPRs  
02:24:49 3                   and the arguments that were made thereunder.   So I'd like  
02:24:57 4                   to turn to this combination of Karasiuk and Palmer.

02:25:05 5                   The combination of Karasiuk and Palmer basically is  
02:25:07 6                   saying, look, here's this machine that I would love to  
02:25:12 7                   invalidate.   Let me see if I can piece it together by  
02:25:14 8                   using the art.   That is impermissible hindsight bias.  
02:25:19 9                   You can't implicitly take a patent and say I would love  
02:25:19 10                  to rebuild it because that patent needs to have been  
02:25:23 11                  obvious, meaning anybody could have and would have done  
02:25:26 12                  it.   There would have been motivation in 2005 to do it.

02:25:30 13                  And you know more than anything what showed that  
02:25:33 14                  there was no such motivation is the secondary  
02:25:38 15                  considerations.   The rampant amount of sales that were  
02:25:42 16                  made, the elimination of an entire industry, and the  
02:25:45 17                  rampant copying by others, including by Aesthetic  
02:25:48 18                  Management Partners of that patent technology proves that  
02:25:53 19                  there was no motivation to combine it.

02:25:56 20                  Again, we're not talking about the fourth line  
02:25:58 21                  improvement of something.

02:25:58 22                  **MR. RADER:**   Your Honor, I apologize, and I think  
02:26:01 23                  I know the answer to this.   But I would like to register  
02:26:05 24                  an objection.   In their motion papers, HydraFacial  
25                  included an analysis of supposed secondary considerations

02:26:10 1 by their expert and decided not to include it in their  
02:26:13 2 motion papers. So they waived any argument about  
02:26:16 3 secondary consideration. So I just want to object to  
02:26:20 4 this line of argument at the hearing.

02:26:22 5 **MR. RAZAI:** Your Honor, as an initial matter we  
02:26:24 6 put that into our declaration. Secondary considerations  
02:26:25 7 of nonobviousness are only made in rebuttal to a showing  
02:26:28 8 of obviousness, which is their burden. That burden, they  
02:26:32 9 tried to carry it in their opposition papers. Now this  
02:26:37 10 is the reply showing the opposition to something where  
02:26:40 11 they carry the burden in a regular case with clear and  
02:26:42 12 convincing evidence and in the PI with slightly less than  
02:26:45 13 clear and convincing. Not as low as preponderance, but,  
02:26:49 14 again, this is their burden, not ours, Your Honor.

02:26:52 15 **THE COURT:** What I'll do is I'll hear the  
02:26:54 16 argument for the record, and if I find there's some sort  
02:26:56 17 of waiver, I won't consider it. But let's go ahead and  
02:27:00 18 move forward and have it.

02:27:02 19 **MR. RADER:** Thank you, Your Honor.

02:27:02 20 **MR. RAZAI:** Looking at this issue of hindsight,  
02:27:07 21 we have someone trying to rebuild a patent by saying  
02:27:10 22 let's look at this dental irrigation device. And what  
02:27:12 23 Palmer is, basically, is product that has small amounts  
02:27:16 24 of liquid that come out so that you can treat gingival  
02:27:21 25 issues in someone's mouth. There's no vacuum that pulls

02:27:24 1 it out. There's no vacuum source. It's a peristaltic  
02:27:24 2 pump that pushes liquid onto someone's mouth. It has  
02:27:29 3 nothing to do with skin.

02:27:30 4 It has to do with -- the same thing with a power  
02:27:33 5 washer. There's power washers out there that clean  
02:27:34 6 streets that you can probably draw from two or three  
02:27:37 7 different liquids out there. But what would be the  
02:27:40 8 motivation to take a power washer or this dental  
02:27:43 9 irrigation device and now create this multi-modal hydro  
02:27:48 10 dermabrasion machine that would replace an entire  
02:27:50 11 industry?

02:27:51 12 Now, secondary considerations are not just the  
02:27:54 13 cumulative or confirmatory part of the obviousness  
02:27:57 14 calculus but constitute independent evidence of  
02:28:00 15 nonobviousness. And they are crucial in avoiding the  
02:28:04 16 trap of hindsight, which is exactly what's happening  
02:28:08 17 here.

02:28:08 18 Looking at, again, the sales, secondary  
02:28:08 19 considerations are often the most probative and cogent  
02:28:16 20 evidence in the record and often establish that an  
02:28:20 21 invention appearing to have been obvious in light of the  
02:28:23 22 prior art was not.

02:28:24 23 Now, what does that mean? When something would have  
02:28:26 24 been obvious, the fact that there would be so much money  
02:28:27 25 to be made would have motivated somebody to have done it.

1 And that's why you can look at it and say, look, this  
02:28:36 2 analysis that was done with a peristaltic pump and  
02:28:37 3 irrigation device combining it with this other device is  
02:28:40 4 probably hindsight. You're just trying to rebuild it.

02:28:44 5 Because if there was a motivation to do it and  
02:28:47 6 there's billions of dollars at stake, somebody would have  
02:28:51 7 done it. And the fact that no one was doing it and as  
02:28:51 8 soon as this company came out you have rampant copying by  
02:28:56 9 others show, which is another secondary consideration,  
02:28:56 10 shows that it wasn't obvious. Shows that this was an  
02:29:00 11 invention that was a stroke of genius.

02:29:02 12 I'm not saying this is the most complicated  
02:29:06 13 invention on earth, but what I'm saying is that, like a  
02:29:08 14 lot of things, its simplicity and the idea of doing this  
02:29:11 15 is what created this industry and is what shows that this  
02:29:13 16 invention was not obvious. You can't just take little  
02:29:17 17 pieces of here and there and put it together.

02:29:19 18 And I'm seeing this in response to the 287 Patent  
02:29:24 19 which is the only patent that actually has been granted  
02:29:27 20 an IPR. The 052 has not. The only thing in the 052 is  
02:29:34 21 that there has been a finding by the director that now  
02:29:37 22 the PTO can evaluate whether to institute on the merits  
02:29:40 23 or not. It's only been a finding of whether to  
02:29:44 24 discretionarily deny based on procedural issues. And now  
02:29:47 25 they say the procedural issues are fine, let's look at

02:29:48 1 them on the merits. That hasn't happened yet.

02:29:51 2 Again, these are the sales. We're talking about  
02:29:54 3 nine-figure -- or ten-figure sales plus another  
02:29:58 4 ten-figure sales in consumables afterwards.

02:30:01 5 Now, there is an argument made in the papers about  
02:30:06 6 there's no nexus, meaning that how do you know that the  
02:30:09 7 success was because of the claimed features. Right?  
02:30:17 8 Well, we, HydraFacial, on accident, tested this. They  
02:30:19 9 had a device that was released later on called the  
02:30:21 10 Nectre. The Nectre used the same serums, it used the  
02:30:26 11 same tips, but it only had one container, one serum  
02:30:30 12 container. It was the same marketing people, same  
02:30:31 13 company name on it, same branding, same serums, like I  
02:30:33 14 said, same tips. And it did the same thing except it  
02:30:37 15 didn't have this manifold system. It didn't have the  
02:30:39 16 ability to be multi-modal, which is what we're talking  
02:30:40 17 about.

02:30:41 18 And what would happen when you saw the sales? It  
02:30:46 19 was much cheaper. Much, much cheaper. This is a  
02:30:49 20 comparison of the sales of the Nectre to the HydraFacial  
02:30:51 21 during the relevant period that they were sold together  
02:30:54 22 to the point where HydraFacial saw there was no purpose  
02:30:58 23 whatsoever in selling them. I have never in my career  
02:31:01 24 seen a better case of nexus that eliminates every  
02:31:04 25 possible aspect that would drive sales beyond the

02:31:07 1 patented features. It had everything.

02:31:09 2 It had the company name. It had the marketing  
02:31:12 3 power. It had the serum bottles. It had the tips. The  
02:31:16 4 only difference was the patented features. The  
02:31:20 5 multi-modality.

02:31:22 6 Let's get into public use. AMP took several -- if  
02:31:26 7 I'm not mistaken, somewhere between four to six  
02:31:29 8 depositions of third parties. There was not a single  
02:31:32 9 third party that confirmed that they got a treatment with  
02:31:34 10 any device prior to the effective date. The best they  
02:31:38 11 got was, I'm 90 percent sure I got a treatment. I'm  
02:31:42 12 pretty sure I got a treatment. But one of the things  
02:31:45 13 that they never asked is what did you get a treatment  
02:31:46 14 with?

02:31:47 15 Nobody could identify whether it was one of the  
02:31:49 16 older prototypes or whether it was a machine. The fact  
17 is the machine didn't even come out until 2005.

02:31:58 18 Now, what's relevant is in their moving papers they  
02:31:58 19 point to a video that was released in March of 2005 and  
02:32:02 20 say, well, that must have been done beforehand. But  
02:32:04 21 what's interesting is that the term "HydraFacial", which  
02:32:08 22 is in that video as a term, wasn't even invented until  
02:32:13 23 very early 2005.

02:32:14 24 There was deposition testimony from Mr. Cohen who  
25 said we used HydraDerm. That's what we were using for

02:32:21 1 the machines. And then around 2005, we decided let's use  
02:32:25 2 HydraFacial. That's the video we're talking about, and  
02:32:27 3 you can see it's got HydraFacial. And even in the video  
02:32:28 4 they're talking about HydraFacial.

02:32:30 5 But you don't have to take my word for it. This is  
02:32:36 7 the trademark application for HydraFacial. The first use  
anywhere was February 1st of 2005.

02:32:39 8 This is the design history file. This is a  
02:32:40 9 memorandum showing that the first five of the ten units  
02:32:43 10 scheduled, this is the plan as to what we're going to do  
02:32:47 11 with them. And the plan as to what we're going to do  
02:32:50 12 with these machines when they arrive -- this is a memo  
13 from January of 2005.

02:32:53 14 But you know what's relevant, what's actually  
02:32:54 15 interesting? If you look in the top right corner -- I've  
02:33:00 16 blown this up, and I've underlined it. This is what they  
02:33:00 17 were calling it. They weren't calling it a HydraFacial.  
02:33:06 18 They were calling it a HydraDerm. That's the name that  
02:33:08 19 was the old name that they changed once they came up with  
02:33:14 20 the word HydraFacial.

02:33:15 21 But another thing that's interesting is that witness  
02:33:15 22 testimony by itself is not enough. The federal circuit  
02:33:19 23 has found that repeatedly. And even though the witnesses  
02:33:21 24 have never confirmed what they received or when they  
02:33:23 25 received it, there's never even been any evidence that

02:33:27 1 says that they actually received it prior to the date.  
02:33:32 2 But even if they had, it wouldn't be enough without  
02:33:32 3 corroborating evidence, and there is none.

02:33:34 4 Now, let's -- we go to this issue of this summary  
02:33:37 5 judgment motion. Yes, they said to the Court in the ITC:  
02:33:41 6 We have this great defense. And the Court said, well, I  
02:33:44 7 invite you to go ahead and file a summary judgment  
02:33:47 8 motion. This is the colloquy that ensued basically  
02:33:48 9 saying, yeah, I don't think we're going to win summary  
02:33:51 10 judgment, so we're probably not going to file it.

02:33:53 11 What they said in the papers were not remotely  
02:33:58 12 consistent with what happened with the ITC.

02:34:01 13 Going to irreparable harm. AMP doesn't dispute that  
02:34:06 14 the parties compete directly for the same customers.  
02:34:06 15 HydraFacial has the manufacturing capacity to meet the  
02:34:13 16 unsold sales -- the unsold machines that we believe  
02:34:15 17 they're making. And the functionality of this machine,  
02:34:18 18 as we showed with the secondary considerations, is really  
02:34:22 19 what drives consumer demand.

02:34:24 20 So what is the irreparable harm? When we sell a  
02:34:32 21 machine, that creates a relationship. That relationship  
02:34:35 22 ensues in us having that customer for a long period of  
02:34:38 23 time and having those consumable sales that go on with  
02:34:41 24 it. In the moving papers they said, well, we have four  
02:34:42 25 customers in common. Well, what about the other

200-and-some-odd customers that we don't have in common?  
Those are the ones that we're being irreparably harmed.

Second factor that we'll get into in a second --

**THE COURT:** Before you move on to that.

**MR. RAZAI:** Yes, Your Honor.

**THE COURT:** Isn't that a calculation that some  
economist could make as to what those sales could mean  
over a period of time?

**MR. RAZAI:** It could be, Your Honor, but let me  
get into this other factor that's important. When we  
have this patent on this seminal technology and we have  
enforced it the way that we have and have kept the market  
clean going in to expiry, one issue that they make --  
that they point to is the fact the patent is expiring in  
March of 2026.

Going into this March of 2026, what AMP is doing is  
they're artificially clothing themselves out to be a  
competitor with HydraFacial in this space while every  
other competitor that they have that has agreed to stop  
must wait until March of 2026. When March of 2026 comes  
up -- and I'll show you the list of people who have  
consent judgments and who have contractually agreed not  
to sell based on the -- most of them are based on the 052  
Patent. When that happens and everybody comes into the  
market, there's going to be a legitimization artificially

02:36:05 1 of AMP and what it does because it was allowed to sell  
02:36:08 2 into a market that it was selling into in an infringing  
02:36:14 3 basis where others had gotten out of the market.

02:36:16 4 And now we're going to be competing with AMP as a  
02:36:20 5 more-recognized brand in this market as opposed to all  
02:36:22 6 these entrants who are going to be coming in, who have  
02:36:23 7 waited their turn, who are going to coming in. And now  
02:36:27 8 that competitive relationship between AMP and HydraFacial  
02:36:30 9 is different than it would be if they came in when they  
10 were supposed to come in into a market that we had this  
11 monopoly in.

02:36:35 12 On top of that aspect it's that competitive  
02:36:38 13 relationship. We can't quantify that. And in terms of  
02:36:41 14 keeping the market clean whereas everybody comes in on  
02:36:46 15 equal footing as competitors to HydraFacial, they  
02:36:48 16 artificially come in as a bigger competitor and somebody  
02:36:52 17 who is more established because of their continued sales  
02:36:55 18 as opposed to this giant list of people and companies,  
02:36:59 19 large companies as well, who have said we'll wait our  
02:37:03 20 turn until March of 2026.

02:37:03 21 **THE COURT:** As you're saying that, I'm trying to  
02:37:04 22 think through. Isn't that the problem of these other  
02:37:08 23 people who have agreed to whatever they've agreed to?

02:37:11 24 **MR. RAZAI:** They've agreed to it, Your Honor,  
02:37:13 25 because there was litigation, and after litigation they

02:37:15 1 agreed to it because they saw that there was not going to  
02:37:18 2 be success on those merits.

02:37:20 3 **THE COURT:** Sure. But, I mean, using their --  
02:37:22 4 the resolution of those matters in this -- I have to  
02:37:27 5 think it through.

02:37:28 6 **MR. RAZAI:** Yes, Your Honor. And then they're  
02:37:31 7 talking about the delay in seeking a preliminary  
02:37:37 8 injunction. There has been no delay. Ever since we  
9 found out about -- or ever since HydraFacial found out  
02:37:42 10 about AMP, there's either been settlement discussions --  
02:37:43 11 we flew to Tennessee to have settlement discussions with  
02:37:47 12 them at their request. Those didn't work out.

02:37:50 13 Went to the ITC. The ITC wasn't going to rule in  
02:37:54 14 time, so we came back to district court where again we  
15 were invited by AMP to engage in settlement discussions.  
02:37:57 16 We got pretty close to settlement. It didn't work out,  
02:38:00 17 and this PI motion was filed very shortly thereafter.  
02:38:05 18 The entire timeline of events are on Slide 56 -- 60 and  
02:38:13 19 61, Your Honor, and you'll see there is no delay in that  
02:38:14 20 period.

02:38:14 21 The next question is a patentee that in the papers  
02:38:18 22 AMP said, well, why didn't you seek a PI against  
02:38:23 23 everyone. We have sought a PI against MediFacial.  
24 That's pending right now. We have consent judgments  
02:38:25 25 against several other infringers. We're waiting for a

02:38:31 1 decision from the ITC against one of the larger  
02:38:34 2 infringers. That should come out in a few weeks here.

3 But as the federal circuit says, a patentee does not  
02:38:39 4 have to sue all infringers at once, which we've done.  
02:38:40 5 But the resources are limited, and in terms of resources,  
02:38:44 6 we look to see who's making the biggest impact in the  
02:38:47 7 market based on the revenue and the sales and the units  
02:38:50 8 being pushed in. And that's a decision that we get to  
02:38:53 9 do -- we get to make, and that's the decision that we've  
02:38:55 10 made here.

02:38:56 11 But looking at this, Your Honor, we have obtained  
02:38:59 12 consent judgment. We have obtained agreements to not  
02:39:02 13 enter the market until the patent is expired. And that  
02:39:05 14 list is very long. That list also are the people who are  
02:39:09 15 copying this technology, and they're on the Slide 63.

02:39:12 16 We talked about non-infringing alternatives. First  
17 of all, I don't understand the relevance of  
02:39:16 18 non-infringing alternatives, but second of all, they've  
02:39:18 19 put a product into the papers without any analysis,  
02:39:22 20 without any dissection as to whether it is infringing or  
02:39:26 21 not infringing and saying somehow this saves us from a  
02:39:30 22 PI. It does not.

02:39:32 23 Balance of hardships. HydraFacial's business is the  
02:39:37 24 asserted patents. This is almost our entire business.  
02:39:41 25 If you look at this slide, looking at 2019 to 2024, the

02:39:45 1 yellow represents other products, other sales that are  
02:39:49 2 not consumables, tips, and the machines. When it comes  
02:39:53 3 to AMP, they say our revenue in 2024 was [REDACTED],  
02:39:58 4 but --

02:39:58 5 **MR. RADER:** Your Honor, I'm sorry to interrupt  
02:40:03 6 Mr. Razai. That was a confidential piece of information  
02:40:07 7 that was redacted. I don't know if there are any third  
02:40:11 8 parties here in the courtroom, but we would ask that our  
9 confidential information be respected and discussed only  
10 when the courtroom is closed.

11 **MR. RAZAI:** I apologize, Your Honor. I can go  
12 back. I believe we only --

13 **THE COURT:** I don't believe there's any --

02:40:17 14 **MR. RADER:** Is there something we can do about  
02:40:20 15 the transcript on that as well, Your Honor?

02:40:22 16 **MR. RAZAI:** Can we redact the transcript on that  
17 portion, Your Honor?

02:40:25 18 **THE COURT:** You can't redact it, but we can put  
02:40:26 19 that portion of it under seal.

20 **MR. RADER:** Thank you, Your Honor.

21 **MR. RAZAI:** Thank you, Your Honor.

22 **THE COURT:** Or, you know, we can't redact it in  
23 the sense of taking it out --

24 **MR. RAZAI:** I get it. You can put a little --

25 **THE COURT:** -- but you can put it under seal.

1 MR. RADER: Thank you, Your Honor.

02:40:45 2 MR. RAZAI: In the public interest factor, like  
02:40:47 3 I said, Your Honor, in evaluating -- sorry. We talked  
02:40:47 4 about some of the other entrances in the market and what  
02:40:48 5 they've agreed to based on what the patents represent.  
02:40:51 6 But looking at it from the legal standpoint, in  
02:40:55 7 evaluating whether the public interest favors the grant  
02:40:58 8 of an injunction, the district courts are focused on  
02:41:03 9 whether a critical public interest would be injured by  
02:41:05 10 the grant of injunctive relief. Where is the public  
02:41:07 11 interest -- where is the public going to be harmed by the  
02:41:08 12 grant of an injunction?

02:41:10 13 The machines that AMP sells are the same price if  
02:41:15 14 not more expensive than our product. We would be able  
02:41:18 15 to, obviously, take on the capacity. There would be no  
02:41:18 16 shortage. We're not talking about a machine that affects  
02:41:21 17 the health or the livelihood of certain people.

02:41:24 18 And on the bond issue, the bond that AMP has  
02:41:28 19 requested covers July 2025 through March 29, 2026. First  
02:41:35 20 of all, we're already done with July 2025. AMP is using  
02:41:40 21 their sales overall over the course of the past year and  
02:41:44 22 a half to say this is what our sales are, but the sales  
02:41:47 23 have been trending down.

02:41:49 24 And then they cite to a case, I believe an Apotex  
02:41:54 25 case, where there was a bond of \$400 million that was

02:41:56 1 set. And in that \$400 million bond, that would represent  
02:42:00 2 10 percent of the market. Meaning that in this case if  
02:42:01 3 you were to do that, we'd be around \$125,000, not \$2.4  
02:42:04 4 million. That bond is highly excessive and would be  
02:42:09 5 prohibited almost of getting the relief that we needed.

02:42:12 6 That's all I had for the presentation, Your Honor.  
02:42:16 7 And we'll be happy to call some of the fact witnesses and  
02:42:19 8 the expert witness to elaborate on some of this stuff  
02:42:22 9 that I discussed unless you have any questions.

02:42:27 10 **THE COURT:** I'm good right now.

02:42:31 11 **MR. RAZAI:** Thank you, Your Honor.

02:42:31 12 **THE COURT:** Thank you.

02:42:47 13 **MR. RADER:** Your Honor, if it please the Court,  
02:42:50 14 my plan had been to provide a somewhat more brief  
02:42:54 15 introduction on a couple of the key issues and then save  
02:42:59 16 the bulk of our argument for after the witness testimony.  
02:43:03 17 Although, we're happy to do it differently if it would be  
18 better for Your Honor.

02:43:06 19 **THE COURT:** That's fine.

02:43:07 20 **MR. RADER:** All right. Thank you.

02:43:08 21 So there are a number of issues that are raised in  
02:43:10 22 the briefing here that Mr. Razai touched on. There are  
02:43:14 23 really two issues where we really want to draw the  
02:43:18 24 Court's attention. Two issues that we think are more  
25 important and really rise above the noise of all the

1 others that compel the Court's attention.

02:43:34 2 The first is that the patent office itself right now  
02:43:37 3 is actively reconsidering the validity of both of these  
02:43:43 4 patents, which makes this a very unusual preliminary  
02:43:55 5 injunction motion because, as defendants, we don't need  
6 to prove our case. We don't need to prove invalidity,  
02:43:57 7 for example, by clear and convincing evidence.

02:43:58 8 To resist a preliminary injunction, what we need to  
02:44:06 9 show is that there's a substantial issue on either  
02:44:06 10 validity or infringement, or in this case both, meaning  
02:44:07 11 there's a meaningful defense that we have.

02:44:11 12 In this case the patent office itself is  
02:44:14 13 reconsidering both of these patents and has established  
02:44:19 14 even, I would submit, well beyond a meaningful defense  
02:44:22 15 that exists on validity. So I'll start with the 287  
16 Patent.

02:44:31 17 AMP filed an inter partes review with what's called  
02:44:33 18 the PTAB, the Patent Trial and Appeal Board. We call it  
02:44:34 19 the PTAB. And the PTAB decided to institute. So there's  
02:44:39 20 a two-step process.

02:44:41 21 First they decide is there enough merit in this  
02:44:44 22 petition that it makes sense to commit resources of the  
02:44:48 23 PTAB to evaluating it to a trial. They call it a trial.  
02:44:51 24 And the PTAB decided yes.

02:44:53 25 The standard for that is set forth in the patent

statute Section 314. It's a reasonable likelihood that the claims that are being challenged in the petition will be found invalid or impactable, a reasonable likelihood.

It's basically the mirror image of the plaintiff's burden for preliminary injunction. They have to show a likelihood of success on the merits. Here the Patent Office has already established that the likelihood is that we will win on the validity of the 287 Patent.

Now, HydraFacial sought a discretionary denial. That's where the director of the Patent Office -- the way it's working now is that the director can decide setting aside the merits. Even if the merits are very strong, we can deny the petition for other reasons such as an impending district court trial, which we don't have here, or even workload or other issues, or, for example, what they called settled expectations.

If the patent issued a long time ago, the current director is now denying a lot of petitions for that reason even if the merits are strong.

HydraFacial sought a discretionary denial of the petition against the 287 Patent, which was denied yesterday. So that's an update from our brief. The director denied that with a one-line order. Our IPR against the 287 Patent is in trial and will be decided, I believe the date is, no later than June 2nd, 2026. We'll

02:46:24 1 have a final written decision from the board.

02:46:27 2 So from a standard perspective we have a reasonable  
02:46:32 3 likelihood of success against Claim 22 and all the claims  
02:46:36 4 of the 287 Patent. That defeats a preliminary injunction  
02:46:44 5 right there. From a statistical perspective --

02:46:44 6 **THE COURT:** Let me stop you there because  
02:46:44 7 plaintiffs have cited law that says I shouldn't just  
02:46:48 8 defer to that status of the 287 Patent. What is your  
9 response to that?

10 **MR. RADER:** Well --

02:46:59 11 **THE COURT:** And I believe he's also said that  
02:47:02 12 some other courts have found differently.

02:47:04 13 **MR. RADER:** Right. So if you look at the three  
02:47:09 14 district court decisions we cite from three different  
02:47:10 15 courts on -- I believe it's Page 6 of our opposition  
02:47:12 16 brief starting with the *Alexion* case which was from the  
02:47:18 17 District of Delaware just last year in 2024. They focus  
02:47:22 18 heavily on the IPR. And, in fact, they make a clear  
02:47:23 19 statement that while the IPR is pending -- I believe  
02:47:28 20 perhaps all three, but at least one or two of them make  
02:47:31 21 the statement while an IPR is pending, there can be no  
02:47:33 22 likelihood of success on the merits for the plaintiff.

02:47:36 23 Now, I'm not saying that's true as a matter of law.  
02:47:40 24 It certainly does not, you know, mean that Your Honor  
02:47:43 25 shouldn't make your own evaluation of the merits. And

02:47:46 1 you have the petitions, you have the full expert  
02:47:49 2 declaration. That's all in the record.

02:47:52 3 But the point is you have an expert agency that does  
02:47:56 4 nothing but reevaluate issued patents that has come to  
02:48:00 5 the conclusion that we are likely to prevail. That's an  
02:48:04 6 important factor. And court after court has said that.

02:48:09 7 Now, there is one exception that they pointed to in  
02:48:12 8 their brief, this *Tinnus* case, and we responded to that.  
02:48:14 9 In the *Tinnus* case it was a PGR, not an IPR. It was a  
02:48:18 10 Section 112 attack, not a prior art attack. But the  
02:48:20 11 district court recognized immediately that in that  
02:48:23 12 particular case the PTAB's decision was clearly wrong and  
02:48:32 13 legally erroneous.

02:48:33 14 And it turned out there were two separate appeals.  
02:48:33 15 The PGR was appealed to the federal circuit, and the  
02:48:38 16 preliminary injunction was appealed to the federal  
02:48:40 17 circuit. On appeal from the PGR, the federal circuit  
02:48:42 18 said, yeah, the PTAB got that one totally wrong. They  
19 whiffed. And so the district court was right in that  
20 specific case to ignore it.

02:48:51 21 But there is no analysis in their brief whatsoever  
02:48:54 22 of the PTAB's decision. You have the PTAB's decision in  
02:48:56 23 the record. You have AMP's expert declaration in the  
02:48:59 24 record. And they don't even try to grapple with the  
02:49:05 25 PTAB's decision. What they have are a couple of these

arguments that we will address.

**THE COURT:** Okay.

**MR. RADER:** Okay. From a statistical perspective, just so Your Honor knows -- and the PTAB makes all of its statistics available on its website. We'd be happy to point you to it if it's helpful. Seventy-five percent of -- more than 75 percent of all the claims of patents that are in an instituted IPR, which is the case for us in the 287 Patent, die. Either they're held unpatentable by the board in a final written decision, or the patent owner surrenders and disclaims them. So 75 percent.

The standard -- from a standards perspective, it's reasonable likelihood. From a percentage perspective, the data show that we have a 75 percent chance of Claim 22 being found invalid for the 287 Patent.

Now, on the 052 Patent, Mr. Razai said, well, there's no IPR. Well, that's not accurate. IPR is filed by two parties. One is a third party called *Eunsung*, and the other is a nearly identical IPR filed by AMP just in case there's -- we won't go into the details, but there's a procedure. If *Eunsung* settles out or something, we can step into their shoes. Or if for some reason their IPR is denied, ours can be considered on the merits, which is what happened on the 287 case actually.

02:50:43 1 *Eunsung* filed an IPR. HydraFacial asked for  
02:50:44 2 discretionary denial. Not merits based. For procedural  
02:50:48 3 reasons. The director denied their request for  
02:50:53 4 discretionary denial. And in doing so -- now we're not  
02:50:57 5 even talking about a PTAB judge. We're talking about  
02:51:01 6 their boss. The top person. The director of the U.S.  
02:51:03 7 Patent Trademark Office. She made a very clear statement  
02:51:08 8 of what she thinks about the merits.

02:51:10 9 And if we could have AMP's Exhibit 22, please. And  
02:51:15 10 please advance. One more. Okay.

02:51:28 11 So in this case the 052 Patent issued in 2017, so  
02:51:42 12 it's eight years old. I think I mentioned before that  
02:51:44 13 the current director is discretionarily denying a lot of  
02:51:48 14 petitions where the patent is issued more than five years  
02:51:51 15 ago.

02:51:52 16 So she said, you know, we might consider  
02:51:57 17 discretionarily denying this patent on that basis, but --  
02:52:02 18 and let's highlight that second paragraph -- the  
02:52:03 19 petitioner here -- that was *Eunsung* -- made arguments  
20 that the office materially erred. And those arguments  
02:52:07 21 are persuasive. Because there was a persuasive argument  
02:52:16 22 made by the petitioner that the patent examiner made a  
02:52:17 23 mistake in the first instance in issuing the 052 Patent,  
02:52:20 24 that overcame the director's normal predilection to  
02:52:24 25 discretionarily deny petitions on patents that are issued

02:52:29 1 more than five years ago.

02:52:30 2 And in particular, she commented on the Karasiuk of  
02:52:36 3 reference. That's the one we're talking about today.

4 Although the patent examiner determined that  
5 Karasiuk was pertinent but did not disclose the allowable  
02:52:40 6 features -- that's what the examiner said eight years ago  
02:52:44 7 when issuing the 052 Patent -- petitioner persuasively  
02:52:50 8 demonstrates the patent examiner overlooked certain  
02:52:52 9 teachings in Karasiuk -- and here's kind of the key  
02:52:53 10 phrase -- that appeared to disclose of the allowable  
02:52:58 11 features of the claims.

02:52:59 12 So the director of the Patent Office is saying it  
02:53:02 13 looks like that which supposedly is patentable is in the  
02:53:06 14 prior art.

02:53:07 15 Now, procedurally, Mr. Razai is right, we haven't  
02:53:10 16 yet gotten to an institution decision. That will happen  
02:53:14 17 in August. It happens six months after the filing date  
02:53:18 18 is recorded, so that's going to be in August.

02:53:20 19 This is now going back from the director to the PTAB  
02:53:24 20 for the panel to decide whether to institute. They're  
02:53:26 21 doing it with this statement from the director. And  
02:53:29 22 respectfully, the issue is not even whether they  
02:53:33 23 institute. The question is, is there a substantial or  
02:53:37 24 meaningful question about the validity of the claim  
02:53:40 25 that's being asserted on a preliminary injunction motion.

02:53:44 1           These patents are related. They share the same  
02:53:49 2 specifications. The claims are very similar. And now we  
02:53:52 3 already have this statement from the director making  
02:53:54 4 clear that Karasiuk, in her view, discloses the -- or at  
02:53:56 5 least is very likely to disclose the allowable features  
02:54:01 6 of the claim. That's a very unusual situation for a  
02:54:04 7 preliminary injunction motion.

02:54:04 8           **THE COURT:** As a matter of just the record, the  
02:54:08 9 document you brought up is Exhibit 22 to ECF -- is it 69?

02:54:19 10           **MR. RADER:** Yes. I've just been thinking of it  
02:54:21 11 as our Exhibit 22 because we called it Exhibit 22 in our  
02:54:25 12 opposition brief. But, yes, it looks like it's Docket  
02:54:31 13 69-22.

02:54:32 14           **THE COURT:** All right. Just so the record is  
02:54:33 15 clear.

02:54:34 16           You said what happens in August? What's that next  
02:54:37 17 step?

02:54:37 18           **MR. RADER:** The next step is that the  
02:54:41 19 three-judge panel from the PTAB makes their regular  
02:54:45 20 institution decision. The way it works now -- it used to  
02:54:48 21 be that they considered both discretionary denial and the  
02:54:50 22 merits. This director changed it a few months ago, so  
02:54:54 23 now the director considers discretionary denial issues,  
02:54:58 24 and the panel is just to consider whether to institute on  
25 the merits.

02:55:00 1 So it goes back to the panel for a regular  
02:55:04 2 run-of-the-mill merits decision. There will be no  
02:55:07 3 discretionary denial because that's her decision.

4 **THE COURT:** Yes.

02:55:10 5 **MR. RADER:** And that will be their decision in a  
02:55:12 6 few weeks in August.

02:55:13 7 **THE COURT:** You're saying they'll issue a  
02:55:18 8 decision or --

02:55:18 9 **MR. RADER:** Yes.

10 **THE COURT:** Okay.

02:55:18 11 **MR. RADER:** They will issue what's called an ID,  
02:55:24 12 an institution decision.

02:55:25 13 **THE COURT:** Okay. Thank you.

02:55:26 14 **MR. RADER:** The second issue that we want to  
02:55:33 15 call to your attention is the delay. Mr. Razai touched  
02:55:37 16 on it. If there is irreparable harm from a party selling  
02:55:45 17 an allegedly infringing product, you seek a preliminary  
02:55:49 18 injunction quickly. Simple logic. If you're being  
02:55:51 19 irreparably harmed, you don't wait 20 months.

02:55:54 20 Generally speaking, you file the preliminary  
02:55:56 21 injunction motion on the same day you file the complaint.  
02:55:59 22 That's what people do. There are occasions where it's  
02:56:02 23 filed two or three weeks later if the patent owner wants  
02:56:06 24 to get their complaint on file quickly, and then it takes  
02:56:09 25 a couple of weeks to get their motion together. We see

02:56:12 1 that.

02:56:12 2 Here they waited 11 months after filing their  
02:56:15 3 complaint and 20 months after sending us a  
02:56:18 4 cease-and-desist letter. That's not irreparable harm.  
02:56:43 5 And on top of that, Your Honor, when they filed this case  
02:56:27 6 in July of 2024, they not only agreed to, they themselves  
02:56:33 7 moved for a stay of this case jointly with AMP. And they  
02:56:38 8 did not have to do that.

02:56:40 9 There is a statute we cited in our brief, and I am  
02:56:47 10 blanking on the section. There's a statute that allows a  
02:56:50 11 defendant to, as a matter of right, seek a stay of a  
02:56:55 12 district court patent litigation as to patents that  
02:56:59 13 overlap with those asserted at the ITC. In this case,  
02:57:05 14 these two patents overlap. But there's a third consult  
02:57:09 15 patent with claims very similar to these two, the 477  
02:57:14 16 Patent, in addition to the tip patents, which we're not  
02:57:16 17 really worried about today.

02:57:19 18 The 447 Patent was asserted in this case, and it was  
02:57:19 19 not asserted at the ITC. They had every right to ask for  
02:57:24 20 a preliminary injunction when they filed this case in  
02:57:27 21 July of 2024. And instead, they sought a stay. They did  
02:57:31 22 not want a preliminary injunction.

02:57:35 23 They wanted to punish us by suing at the ITC where  
02:57:38 24 it's extremely expensive to defend yourself, but they did  
02:57:43 25 not want a preliminary injunction.

02:57:44 1                   **THE COURT:** According to this timeline in the  
02:57:46 2 plaintiff's slides, they say on August 22nd of 2024, AMP  
02:57:52 3 requested a joint motion to stay this litigation.

02:57:56 4                   **MR. RADER:** I would encourage Your Honor to look  
02:57:58 5 at Docket 19. It's a fully joint motion. It's not an  
02:58:02 6 unopposed motion or anything like that. It is a joint  
02:58:05 7 motion that they filed with AMP requesting a stay.

02:58:08 8                   **THE COURT:** I guess the only -- and I understand  
02:58:11 9 your point is they agreed to it, but this specifically  
02:58:15 10 says your client requested it.

02:58:19 11                   **MR. RADER:** Well, we both requested it.

02:58:21 12                   **THE COURT:** Okay.

02:58:22 13                   **MR. RADER:** I think the key point, Your Honor,  
02:58:24 14 is they did not oppose it. I mean, the gravy on top is  
02:58:28 15 that they jointly moved, but the point is they did not  
02:58:31 16 seek a preliminary injunction. Instead, they agreed to  
02:58:34 17 and sought a stay of litigation when they did not have to  
02:58:37 18 do that. That's legally clear, but that's not what they  
02:58:41 19 wanted. They weren't looking for injunctive relief.

02:58:45 20                   And I'll just add this additional color about the  
02:58:49 21 ITC litigation, Your Honor. Of course it was very late  
02:58:53 22 filed, so from day one there was a real risk that they  
02:58:57 23 were not going to get any relief there at all because the  
02:59:00 24 patents expire in March 2026.

02:59:05 25                   Now, perhaps the target date, they call it, the

02:59:07 1 schedule for the cases, of course, is up to the  
02:59:09 2 discretion of the administrative law judge. Had she set  
02:59:11 3 a 17-month schedule, which is common, they might have had  
02:59:15 4 a month or two of relief at the ITC. She set a 19-month  
02:59:19 5 schedule. That happened right at the outset of the case.  
02:59:23 6 So as soon as she set that schedule, everyone knew they  
02:59:27 7 couldn't possibly get any relief.

02:59:29 8 You can't exclude someone or enjoin someone on a  
02:59:33 9 patent that's expired. And we filed a motion to  
02:59:36 10 terminate the case. They opposed it. They wanted to  
02:59:39 11 keep going at the ITC knowing they couldn't get relief.

02:59:43 12 They asked the ITC in an extremely unusual request,  
02:59:48 13 which since 1973 when the statute was enacted has never  
02:59:54 14 succeeded as far as we can tell. They asked the ITC to  
02:59:56 15 overturn the ALJ's discretionary setting of a 19-month  
03:00:00 16 target date, and the commission rejected their request.  
03:00:03 17 And they waited another three months after that.

03:00:06 18 So at that point there was total, you know,  
03:00:11 19 complete, you know, confidence there was no way anything  
03:00:14 20 was going to happen because the ITC had already rejected  
03:00:18 21 their request to shorten the target date. They pushed us  
03:00:21 22 for another three months in ITC litigation before finally  
03:00:25 23 terminating their own case about ten days before the  
03:00:28 24 close of discovery. So this was never about getting  
03:00:32 25 relief. It was about causing AMP to have to spend money.

03:00:36 1 So the case -- the preliminary injunction motion is  
03:00:38 2 highly unusual for both of these reasons. We have the  
03:00:41 3 PTAB, the experts of reevaluating issued patents saying  
03:00:44 4 there's a substantial likelihood we will prevail on the  
03:00:50 5 287. We expect that's going to happen on the 052. But  
03:00:51 6 even as of this moment we have a director saying the  
03:00:55 7 examiner was mistaken and misunderstood the key  
03:00:58 8 reference. And then we have a 20-month delay from when  
03:01:02 9 they sent us a letter.

03:01:03 10 And by the way, we didn't get any discovery in  
03:01:07 11 connection with this preliminary injunction motion. I'm  
03:01:10 12 very confident that HydraFacial was aware of our sales.  
03:01:14 13 This is their only product, as Mr. Razai showed you.  
03:01:17 14 They monitor the market very carefully.

03:01:19 15 We started selling in February of 2022. We didn't  
03:01:22 16 get the letter until October of 2023. So I'm very  
03:01:28 17 confident, and maybe we'll learn it from their business  
03:01:32 18 person today, that they were well aware of our sales even  
03:01:35 19 long before the letter in October 2023.

03:01:37 20 So I'm just -- with Your Honor's permission I'll  
03:01:39 21 just give a brief overview of a couple of issues, and  
03:01:44 22 then we'd like to get into the testimony and reserve a  
03:01:48 23 little bit of time for our argument at the end if that's  
03:01:51 24 okay. I'll try to be quick.

03:01:54 25 If we could go back to the presentation.

03:01:56 1           You'll hear this from Mr. Crosby, but this is what  
03:02:01 2           AMP does. They sell aesthetic consoles to licensed  
03:02:07 3           practitioners. The AquaFirme XS, which is in the upper  
03:02:11 4           right-hand corner here, is one of those consoles. So  
03:02:13 5           they're a business-to-business company. And they have a  
03:02:14 6           number of other products as well.

03:02:17 7           These are some pictures of the console. Mr. Crosby  
03:02:20 8           will talk about it, and then our technical expert,  
03:02:24 9           Professor Slocum, will talk about the internal components  
03:02:29 10          that you see here.

03:02:31 11          I'll pause here for just a second. This is the  
03:02:32 12          Karasiuk reference that we've been talking about. And  
13          what you see, this is actually a very simple -- you could  
14          call it in a way a circuit diagram. But it's not an  
03:02:43 15          electrical circuit. It's a vacuum circuit, as Mr. Razai  
03:02:45 16          mentioned.

03:02:45 17          So on the top left you have this fluid reservoir.  
03:02:49 18          So Karasiuk is -- it does exactly the same thing, and it  
19          works exactly in the same way as HydraFacial's product  
03:02:56 20          and patent. It published in 2003, which is three years  
03:03:00 21          before they filed their first patent application, so it's  
03:03:04 22          prior art.

03:03:04 23          The only difference between Karasiuk and their  
03:03:08 24          patent, their product, is Karasiuk has one fluid  
03:03:10 25          reservoir, 70. It doesn't have multiple bottles. That's

03:03:15 1 it. So you put the serum or whatever it is in the  
03:03:17 2 bottle, 70. It gets sucked through the tube, 14. See  
03:03:21 3 there's a vacuum all the way at the other end of the  
03:03:27 4 circuit just like theirs.

03:03:27 5 The liquid, or the juice as Professor Slocum likes  
03:03:31 6 to call it, gets sucked through the tube, 14, into the  
03:03:34 7 handpiece. You must -- and Karasiuk talks about this too  
03:03:37 8 just like Mr. Razai said. You must press the handpiece  
03:03:40 9 against the skin to complete the vacuum circuit.  
03:03:45 10 Karasiuk says that. It's almost like they read Karasiuk  
03:03:49 11 first before they filed their patent.

03:03:52 12 And then it does the work, and then the waste  
03:03:55 13 product, which is the serum and anything that comes off  
03:03:56 14 your face, comes out through vacuum line, 42. It drops  
15 into this collection reservoir, which is sometimes called  
03:04:04 16 a dropout bucket, and then you have this line, 44, that  
03:04:06 17 goes to the vacuum source which was doing all the  
03:04:10 18 sucking.

03:04:10 19 So if that sounds familiar to what Mr. Razai was  
03:04:13 20 saying, it's Karasiuk that started that. The one thing  
03:04:17 21 it doesn't teach is multiple reservoirs instead of one.  
03:04:22 22 So that's where the Palmer reference comes in. And the  
03:04:29 23 Palmer reference -- so these are references, by the way,  
03:04:30 24 that the PTAB already institutes the 287 IPR on, and the  
03:04:35 25 Karasiuk reference that you just saw is one the director

commented on in the 052 that of which looks like the examiner whiffed on this because this is dead on.

Palmer -- the title of Palmer talks about delivering multiple liquid solutions to a treatment site. It's true that it talks about dental applications, but it's broadly directed to delivering liquids to a treatment site. And Palmer has six bottles, not one.

And Palmer has this thing labeled 16 which is called the liquid solution coupling and selector means. It's a manifold. You've got one, two, three, four, five -- six inputs and one output just like their manifold.

So the idea is -- and this is how obviousness works. You're going to get a real education for patent cases. It's not always the case that one single reference contains everything, but then the question is, wouldn't it have been obvious to a person of ordinary skill in the art -- and by the way, a person of ordinary skill in the art is someone who's fairly skilled.

As the Supreme Court said in our case, they're not an automaton. They have ordinary creativity. That's the Supreme Court's language. They're an engineer that works in the field. They're creative. They're not what they call bodily incorporating things. If the pipe is small in Palmer, they can make it a little bigger and that sort of thing. They make ordinary creative decisions as

03:06:05 1 engineers do.

03:06:07 2 And this is one of the simplest combinations I think  
03:06:10 3 I've ever seen, which is you just take the six containers  
03:06:14 4 from Palmer and you substitute them for the one container  
03:06:19 5 of Karasiuk. And that's the combination that satisfies  
03:06:23 6 and renders obvious for these claims.

03:06:28 7 I already gave you an overview of how the PTAB  
03:06:32 8 works. This Slide 9 is just an overview of the status.  
03:06:35 9 I've already described it to you where we have the IPR  
03:06:39 10 instituted on the 287. The discretionary denial request  
03:06:44 11 denied on the 052. And the director indicating that the  
03:06:49 12 examiner erred. So by August 13th, we do expect an  
13 institution decision on that one.

14 This is a quick timeline. You may hear more later  
03:06:59 15 from Ms. Riccio. But it just gives you the 20 months  
03:07:00 16 from the cease-and-desist letter, the 11 months from when  
03:07:04 17 they filed suit. And it is true there was a little bit  
03:07:06 18 of settlement discussion during a couple of periods, but  
03:07:09 19 as you can imagine not during most of it.

03:07:17 20 This is a list of the cases --

03:07:20 21 **THE COURT:** On the settlement discussions,  
03:07:21 22 though, I would assume you would agree that as you all  
03:07:24 23 are talking to try and work it out and save both your  
03:07:29 24 clients money, you wouldn't have expected during that  
03:07:32 25 time alone for them to seek an injunction.

03:07:36 1 **MR. RADER:** Right. The case law allows for -- I  
03:07:39 2 don't remember the exact phrase, but essentially some  
03:07:41 3 reasonable allowance for reasonable settlement  
03:07:44 4 discussions. So in the case, for example, of the early  
03:07:47 5 mediation, the mediation occurred in May of 2024. It was  
03:07:51 6 unsuccessful. And from then all the way until recently,  
03:07:55 7 we didn't -- there were no meaningful settlement  
03:07:59 8 discussions during the ITC cases. So at that point they  
03:08:02 9 just waited, and they went through the saga that I  
03:08:07 10 described at the ITC knowing there would be no relief.

11 **THE COURT:** Okay.

03:08:13 12 **MR. RADER:** These are the litigations in which  
03:08:15 13 they -- you know, in most of which they've not filed for  
03:08:17 14 a preliminary injunction. And the yellow ones are all  
03:08:23 15 still pending, including against *Cartessa* which is a much  
03:08:33 16 larger competitor than our client. I'm not sure because  
17 it's not public about all the other ones, but that one  
03:08:35 18 I'm quite confident about.

03:08:35 19 **THE COURT:** Which one of these is *Cartessa*?

03:08:45 20 **MR. RADER:** I believe it's the Eastern District  
03:08:47 21 of New York case. And we'll double check it. If I'm  
03:08:54 22 wrong, we'll update you.

03:09:00 23 **THE COURT:** Okay.

03:09:01 24 **MR. RADER:** I'm going to just offer a couple  
03:09:03 25 more comments before we go ahead with the testimony just

03:09:07 1 to respond to a couple of the things that Mr. Razai said.  
03:09:11 2 If I could have Slide 24, please.

03:09:18 3 Your Honor, you're going to hear from Professor  
4 Slocum about this issue of controlling fluid flow. In  
5 the upper left-hand corner of the slide is the claim  
03:09:29 6 language. So I'm sure Your Honor is going to get good at  
03:09:30 7 reading claims.

03:09:30 8 The claim says: Wherein the manifold is configured  
9 to control flow of treatment material. That "configured  
03:09:39 10 to" is very common patent draft in claim language. And  
03:09:41 11 it just means that the manifold needs to be able to  
03:09:46 12 control a flow of treatment material. The question is,  
03:09:50 13 where is the manifold?

03:09:53 14 And what you'll see and what you'll hear from  
03:09:58 15 Professor Slocum is that if there is a manifold here,  
03:10:01 16 it's in the green box because that is a collection of  
03:10:05 17 tubes and fittings that has multiple inputs and an  
03:10:10 18 output.

19 Separately there are solenoid valves that are not in  
03:10:13 20 the manifold, which is different from -- you'll hear this  
03:10:14 21 from Professor Slocum. I don't want to steal his  
03:10:17 22 thunder. But HydraFacial has valves inside the manifold,  
03:10:21 23 unlike this. It's a difference.

03:10:22 24 And we have a really different read of the patent  
03:10:25 25 specification than Mr. Razai. If you look at the middle

03:10:29 1 box on the left, look at what the patent specification  
03:10:32 2 says. It says you can use solenoid valves. That's a  
3 type of valve to control. And it says: In embodiments  
03:10:40 4 where the fluid flow is electronically controlled, the  
03:10:41 5 valve system may alternatively be located in the console  
03:10:45 6 or the manifold system. Those are two options.

03:10:49 7 If it's in the manifold system, so then the manifold  
03:10:53 8 with the valves is controlling fluid flow. And that's  
03:10:56 9 how their product works. If it's in the console, then  
03:11:00 10 the valves are controlling fluid flow, but it's not in  
03:11:03 11 the manifold. It's a separate valve, and the  
03:11:06 12 specification specifically contemplates that as an  
03:11:11 13 alternative. It's not the same thing. It's an  
03:11:14 14 alternative.

03:11:15 15 And you don't have to take my word for it,  
03:11:18 16 HydraFacial has an appeal to the federal circuit against  
03:11:21 17 the different party in which they explain this. So this  
03:11:25 18 is actually their federal circuit brief from a couple of  
03:11:29 19 months ago, in the bottom left, where they said: A  
03:11:31 20 manifold could, of course, control fluid in the sense of  
03:11:34 21 rerouting it if valves were placed inside the manifold.

03:11:40 22 That's our argument, but they said it to the federal  
03:11:45 23 Court of Appeals. Inside versus outside makes a  
03:11:48 24 difference because it's the manifold that has to exercise  
03:11:52 25 the control. There's no valve in the manifold. It's

03:11:56 1 just a pipe.

03:11:59 2 I'm going to stop there so we can move on to the  
03:12:02 3 testimony, unless Your Honor has any questions.

03:12:05 4 **THE COURT:** I'm good.

03:12:06 5 **MR. RADER:** Thank you.

03:12:06 6 **THE COURT:** Thank you.

03:12:08 7 **MR. RAZAI:** Your Honor, before we move on to the  
03:12:10 8 testimony, if I can rebut a couple of the points that Mr.  
03:12:13 9 Rader made?

03:12:13 10 **THE COURT:** I think quickly because if we're  
03:12:16 11 going to do testimony, we need to get it going.

03:12:17 12 **MR. RAZAI:** There was a lot that was said by  
03:12:20 13 Mr. Rader. I think that some of it was the record, some  
14 of it was some embellishments that I don't really find  
15 much support.

03:12:28 16 A couple of things. First, when we're talking about  
03:12:31 17 an IPR being filed, which is what the 052 is, that's not  
03:12:36 18 the same as an IPR being instituted. I never said that  
03:12:41 19 an IPR was not filed on the 052. I've only said that IPR  
03:12:42 20 has not been instituted.

03:12:43 21 Now, going back to these IPRs, AMP has never filed  
03:12:48 22 its own IPR until recently. On the 287 Patent there was  
03:12:55 23 another party who had filed an IPR. AMP decided to join  
03:12:57 24 it. That's what they've done. They didn't have any  
03:13:00 25 belief in these validity positions until somebody else

03:13:02 1 filed an IPR.

03:13:04 2 On the 052 Patent, AMP --

03:13:05 3 **THE COURT:** Let me ask you, does that matter? I  
03:13:09 4 mean, if there are issues that are being addressed by the  
03:13:12 5 --

03:13:12 6 **MR. RAZAI:** It does matter in a couple of  
03:13:16 7 regards, Your Honor. The first is this issue of the 052.  
03:13:23 8 When we talked about the decision coming out on August  
03:13:24 9 13th, there are some serious procedural issues with  
03:13:25 10 respect to the IPR that was filed, and that's why AMP  
03:13:29 11 basically filed this contingent motion saying that if you  
03:13:33 12 don't accept it, then take ours.

13 But that party who filed it also has a consent  
03:13:36 14 judgment that they've entered where they've agreed to  
03:13:38 15 stop shipping their product. I don't know how long that  
03:13:41 16 party will be in the case, but that's irrelevant.

03:13:45 17 What's relevant is some procedural issues. If  
03:13:47 18 procedural takes away that IPR, we're not going to have a  
03:13:50 19 decision on August 13th. We're going to have a decision  
03:13:53 20 on AMP's IPR, which won't be until January of 2026. Not  
03:13:58 21 now.

03:13:59 22 With respect to some of the arguments that were made  
03:14:01 23 about the institution of IPR being the mirror of the  
03:14:04 24 preliminary injunction, it absolutely is not. One, is a  
03:14:07 25 reasonable likelihood of one claim being invalid. That's

03:14:11 1 what the likelihood is at an IPR once it's instituted.

03:14:17 2 But here, the arguments on validity have to have  
03:14:19 3 substantial merit. That's a different standard. If the  
03:14:20 4 standards were the same, then it would be a matter of  
03:14:23 5 law. No one here has argued that it's a matter of law.

03:14:28 6 There were statements made about intent in terms of  
7 filed an ITC to cause us pain or to do various things.  
03:14:33 8 When it came to the settlement discussions, the  
03:14:34 9 settlement discussions ended. When they ended, that just  
03:14:37 10 means we left Tennessee. They continued for many, many  
03:14:41 11 phone calls including the mediator, Jack Waddey, going  
03:14:45 12 back and forth between the parties to find middle ground.  
03:14:48 13 Only when those discussions ended was the ITC case  
03:14:53 14 initiated.

15 The ITC case against AMP was filed before the ITC  
03:14:54 16 case against Cartessa. The Cartessa case got a shorter  
03:15:00 17 target date so we asked the judge can we make the target  
03:15:04 18 -- a different judge, can we make the target dates the  
03:15:05 19 same. Even with the target date, the reason why the ITC  
03:15:10 20 wasn't dropped, even though the target date is when the  
03:15:11 21 commission reviews the initial determination by the ALJ  
03:15:16 22 who basically will say whether the product will be  
03:15:20 23 enjoined from the U.S. or not.

03:15:23 24 More often than not, at the initial determination,  
03:15:26 25 the party who has been enjoined from shipping products to

03:15:30 1 the United States usually stops. Otherwise, I believe  
03:15:33 2 they have to post a bond.

03:15:34 3 So we were looking for that date to see if we could  
03:15:36 4 move the date and also get the initial determination so  
03:15:40 5 that AMP would voluntarily stop sending products into the  
03:15:44 6 United States. When it didn't look like the target date  
7 would be moved and it looked like it would be better to  
03:15:45 8 go back to District Court, we did. And even though we  
03:15:47 9 did, there were still settlement discussions.

03:15:50 10 My guess is that there's probably been more than a  
03:15:54 11 dozen and a half phone calls and e-mails, maybe two  
03:15:57 12 dozen, on settlement in the two different contexts. So  
03:16:00 13 this isn't a thing of settlement stopped. We were led to  
03:16:02 14 believe that we were going to see if we could work this  
03:16:05 15 thing out. Went back and forth, and every time when I  
03:16:10 16 thought we were near the goal line, something happened  
03:16:12 17 where it just didn't work out.

03:16:14 18 So there was no delay that was created by  
03:16:16 19 HydraFacial. Obviously, we would rather work it out  
03:16:20 20 where we could resolve this. And with respect to the  
03:16:22 21 ITC, they requested a stay. We agreed in the District  
22 Court because the injunction at the ITC would be  
23 guaranteed upon victory. That's why we went to the ITC  
24 to get that injunction as opposed to staying here and  
25 fighting on two fronts for the same injunction. We tried

1 to find a path to get them off the market, which would be  
03:16:31 2 more guarantee. And that's why the stay was to conserve  
3 both parties' resources.

03:16:46 4 Going back to another statement that Mr. Rader made,  
03:16:49 5 there was no finding at IPR that all the claims are  
03:16:52 6 likely invalid. There was a finding that one claim, I  
03:16:57 7 believe, of the claims that they talked about has a  
03:16:59 8 reasonable likelihood. And that was on 287, not the 052.

03:17:06 9 And then with respect to the 052, when there was a  
03:17:09 10 discretionary denial brief filed. The discretionary  
03:17:10 11 denial brief on the 052 Patent stated the examiner has  
03:17:12 12 already looked at Karasiuk. The examiner looked at a  
03:17:19 13 different combination of references, and one of the  
03:17:22 14 discretionary denial factors is has one of the references  
03:17:26 15 been -- has that already been characterized.

03:17:28 16 And in that combination, we argued it's already been  
03:17:31 17 looked at. And the way you overcome that is saying there  
03:17:33 18 might have been an error by the examiner. And so without  
19 doing a substantive analysis, the director looked at the  
03:17:42 20 briefing and said there's signs that there may have been  
03:17:45 21 an error by the examiner, so let's let the actual merits  
03:17:50 22 board decide whether they're going to institute or now,  
03:17:51 23 which has not happened.

03:17:52 24 So with respect to the 052 Patent, and we'll hear  
03:17:55 25 from Mr. Leinsing, there has been no determination of any

03:18:00 1 reasonable likelihood of invalidity. With respect to all  
03:18:00 2 the cases that you saw, Your Honor, those cases are all  
03:18:04 3 -- have been litigated for years with that 052, including  
03:18:08 4 the finding of validity in the Eastern District of New  
03:18:12 5 York that's on appeal.

03:18:13 6 Another issue with the appeal, the appeal on the  
03:18:15 7 manifold issue, the argument that is being made by AMP is  
03:18:19 8 the same argument that was made as a secondary round of  
03:18:25 9 affirmants in that appeal in front of the federal  
03:18:26 10 circuit. Our argument was in response, and it's the  
03:18:29 11 exact argument that we're making now. Whether you have a  
03:18:33 12 valve in the manifold or don't have a valve in the  
03:18:36 13 manifold, it's still a manifold.

14 But what's more important in this context, if it's  
03:18:39 15 configured to control the fluid flow -- if a car is  
03:18:41 16 configured to fly, the fact that you put wings on it,  
03:18:46 17 does that make it no longer a car? That makes no sense.  
18 That argument holds no water and is a side argument in  
03:18:52 19 the federal circuit that has now been copied by AMP to  
03:18:54 20 show some kind of a noninfringement position where there  
03:19:00 21 is none. I just wanted to make sure those points are  
03:19:03 22 clear before we get to the evidence.

03:19:06 23 **THE COURT:** Thank you. Call your first witness.

03:19:09 24 **MR. ANGER:** Your Honor, I'm Ben Anger for the  
03:19:13 25 plaintiff, HydraFacial. I'd like to call Mr. Karl

03:19:25 1 Leinsing to the stand.

03:19:26 2 (Oath administered.)

03:19:26 3

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UNREDACTED TRANSCRIPT

\* \* \*

**KARL LEINSING,**

called as a witness on behalf of the Plaintiff, having  
been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

**BY MR. ANGER:**

Q. Mr. Leinsing, good afternoon.

A. Good afternoon.

Q. Mr. Leinsing, you submitted a declaration in this  
case; is that right?

A. That's correct.

Q. Okay.

**MR. ANGER:** Your Honor, it was previously  
submitted as the expert declaration of Karl Leinsing,  
MSME, PE, in support of HydraFacial, LLC's motion for  
preliminary injunction. And it's under docket numbers  
42-2 through 42-6. I guess based on the size, it needed  
to be broken up into multiple entries. If it's okay,  
I'll give this copy to the witness at this point, and  
then we were going to turn to some slides, if that's  
okay.

**THE COURT:** Any objection from the defendant?

**MR. RADER:** No.

**UNREDACTED TRANSCRIPT**

03:23:22 1                   **THE COURT:** Okay. I'm hoping that the fact that  
03:23:27 2                   you're handing him at least about two inches of documents  
03:23:33 3                   does not mean that I should cancel all plans for the next  
03:23:42 4                   17 hours or so.

03:23:44 5                   **MR. ANGER:** No, Your Honor. If you prefer, we  
03:23:46 6                   can -- I was going to have him verify and move through  
03:23:49 7                   it. But we can just turn to the slides if you'd prefer.

03:23:50 8                   **THE COURT:** Let me say in general I hope this  
03:23:53 9                   testimony is pointed at what's in front of the Court now  
03:23:58 10                  and not your entire case and every issue.

03:24:04 11                  **MR. ANGER:** Absolutely, Your Honor. We'll keep  
03:24:06 12                  it targeted.

03:24:07 13                  **THE COURT:** Thank you.

03:24:09 14                  **BY MR. ANGER:**

03:24:10 15                  Q. Mr. Leinsing, you have the screen there in front of  
03:24:12 16                  you?

03:24:12 17                  A. Yes.

03:24:13 18                  Q. And are these slides that you prepared in  
03:24:16 19                  anticipation of your testimony today?

03:24:17 20                  A. Yes.

03:24:17 21                  Q. Okay. So let's go through here. On the first slide  
03:24:22 22                  there we see patent validity. And Mr. Leinsing, have you  
03:24:28 23                  -- do you have an opinion as to the validity of the 052  
03:24:35 24                  and 287 Patents in Karasiuk and Palmer?

03:24:43 25                  A. Yes. At the combination of Karasiuk -- I think

1 we're saying the inventor's name a little differently,  
03:24:45 2 but Karasiuk and Palmer is clearly not obvious. The  
03:24:50 3 combination would just simply not work. And I'll explain  
03:24:54 4 that.

5 **MR. ANGER:** If you'd like, I can provide you  
6 with the slides that we're going through here.

7 **THE COURT:** Sure.

8 **BY MR. ANGER:**

03:25:10 9 Q. On Slide 4 here, Mr. Leinsing, can you explain what  
03:25:15 10 you have here related to the Karasiuk reference?

03:25:18 11 A. Yes. So first in this Karasiuk reference, it's the  
03:25:22 12 415 publication, it's missing many components. It's not  
03:25:28 13 just a matter of multiplying multiple containers here.  
03:25:32 14 There's a lot of different features that make an  
03:25:35 15 automated use of multiple containers work, which is what  
03:25:39 16 the HydraFacial system is.

03:25:41 17 And here it's missing console, the multiple  
03:25:45 18 containers, and the control of flow from multiple  
03:25:48 19 containers. That's what automates the system with the  
03:25:53 20 multiple containers. It's missing the claimed manifold  
03:25:55 21 and the collection lumen.

03:25:56 22 **MR. RADER:** Your Honor, I need to register an  
03:25:58 23 objection. This is similar to or maybe worse than the  
03:26:02 24 secondary considerations. In Mr. Leinsing's declaration  
03:26:06 25 that he submitted in this case he did not include any of

03:26:10 1 this testimony. We walked through the couple of very  
03:26:14 2 thin points that he made in his declaration in our  
03:26:19 3 opposition brief, but it looks from his stack that he's  
03:26:24 4 going to testify about a lot of other things that were  
03:26:27 5 not in his declaration in the case. So I just think it's  
03:26:29 6 -- he's going well beyond the -- if you view it as  
03:26:30 7 essentially an expert report to give us guidance on what  
03:26:32 8 he's going to say, none of this is in there.

03:26:35 9 **MR. ANGER:** Your Honor, the defendants in the  
03:26:37 10 case have the burden on the issue of validity. They  
03:26:41 11 brought that up for the first time in their opposition  
03:26:44 12 brief. We hadn't had an opportunity to address their  
03:26:48 13 validity or invalidity arguments. This is our  
03:26:52 14 opportunity now to address them for Your Honor.

03:26:54 15 **MR. RADER:** Actually, Your Honor, it's the  
03:26:56 16 plaintiff's burden in the context of a preliminary  
03:26:59 17 injunction motion to demonstrate a likelihood of success  
03:27:02 18 on the merits, which includes validity. And they were  
03:27:05 19 well aware of all these issues. They've seen the IPRs.  
03:27:10 20 They know about Karasiuk, Palmer. AMP has filed IPRs on  
21 these.

03:27:13 22 And nevertheless, in the opening declaration,  
03:27:15 23 there's nothing, and in their brief there's nothing. If  
03:27:17 24 you word search their brief for Karasiuk and Palmer, the  
03:27:23 25 words don't even appear. They didn't make any of these

arguments.

**MR. ANGER:** Your Honor, these are arguments that were touched on in Mr. Leinsing's declaration, but now they are in response to the opposition that --

**THE COURT:** You're saying it's -- you're pointing at each other as whose burden it is. Is it your burden? It is a preliminary injunction motion.

**MR. ANGER:** Yeah, and to the extent that we needed to address at a high level what we thought the arguments they were going to make could be, we did that. We addressed the fact that Karasiuk is a reference that we know of now, put those arguments in, and they expanded on those in their briefing and pointed to the IPR. This is in response to those arguments.

**THE COURT:** It sounds like Karasiuk, however you pronounce it, has been out there for a while. I'm going to allow you to go forward in the same way that I did in response to the objection before, and after looking at the issue from a procedural standpoint, if I conclude that you've waived this argument, then I won't consider it.

**MR. ANGER:** Thank you, Your Honor.

**MR. RAZAI:** May I add one thing, another procedural issue, Your Honor?

**THE COURT:** Yes.

03:28:35 1 **MR. RAZAI:** With respect to -- the burden is on  
03:28:38 2 the plaintiff on preliminary injunction, but with respect  
03:28:40 3 to the burden of invalidity, that is on the defendant.  
03:28:45 4 Just the same way as filing an IPR doesn't necessarily  
03:28:49 5 mean that the IPR is somehow meritorious, the fact that  
03:28:53 6 there's a defense that can be raised, there was a defense  
03:28:56 7 raised of public use. We had to devote time to it.  
03:28:59 8 There was a defense that was raised on laches by a party.  
9 We have to devote time to it.

03:29:01 10 And so we understand what defense the defendant in  
03:29:05 11 this case is relying on to defeat preliminary injunction  
03:29:09 12 in the limit of 20 pages. We could go into the detail as  
03:29:12 13 to guessing what issues we're going to be putting front  
03:29:14 14 and center.

03:29:15 15 For example, the prosecution laches arguments that  
03:29:15 16 were made by Cartessa didn't appear here. So we were  
03:29:20 17 doing our best to guess at what needed more time and  
03:29:23 18 space to devote. And these are all things that counsel  
03:29:26 19 is aware of because it's all part of the IPR, Your Honor.

03:29:28 20 **THE COURT:** I guess his argument is you should  
03:29:31 21 have been aware that the validity issue was an issue that  
03:29:34 22 goes to likelihood of success of the merits because it's  
03:29:38 23 obviously been an issue in other proceedings. But I'll  
03:29:42 24 hear the testimony and take a look at it.

03:29:45 25 **MR. RAZAI:** Thank you, Your Honor.

03:29:46 1 **THE COURT:** Thank you. You may proceed.

03:29:48 2 **MR. ANGER:** Thank you, Your Honor. And in the  
03:29:51 3 interest of time, we will get to the heart of the matter  
03:29:53 4 here.

03:29:54 5 **THE COURT:** Thank you.

03:29:55 6 **MR. ANGER:** So there's the Palmer reference  
03:29:58 7 which we began to discuss, which is a dental irrigation  
03:30:03 8 device, but I'll allow Mr. Leinsing to testify on the  
03:30:06 9 issues here of combining these references.

10 **BY MR. ANGER:**

03:30:09 11 Q. So, Mr. Leinsing, what have you shown here on this  
03:30:12 12 slide, Slide 7?

03:30:12 13 A. This slide here is showing the alleged combination  
03:30:16 14 of Karasiuk and Palmer being obvious to the asserted  
03:30:22 15 patents. So first of all, the combination here that I  
03:30:26 16 think was discussed earlier being pointed to as being a  
03:30:29 17 manifold -- I don't know if we can zoom in on that or  
03:30:38 18 not. Are we able to do that?

03:30:42 19 Q. I'm not sure that I am.

03:30:46 20 **THE COURT:** One of the things you can do is you  
03:30:48 21 can write on the screen.

03:30:52 22 **THE WITNESS:** Yeah, I did that by accident, I  
03:30:53 23 think, so I did see that.

03:30:56 24 A. So here this is what's being pointed to as the  
03:31:00 25 manifold, but if you zoom in there, you can see that this

03:31:05 1 is not a -- this is a switch that selects one or the  
03:31:10 2 other, but all of those -- all of these lines are not  
03:31:18 3 connected to a manifold subset. They can each flow out  
03:31:22 4 this part. Only one can flow. It's not a manifold. So  
03:31:29 5 a manifold would be something like this where you would  
03:31:38 6 have -- I'm sorry. That's not working well there.

03:31:42 7 You would have multiple inlets and one outlet. Here  
03:31:46 8 in the circle, you can see that there's only one inlet  
03:31:51 9 possible and one outlet at a time. So that is not a  
03:32:00 10 manifold.

03:32:01 11 The other issues with this combination --

03:32:06 12 Q. Sorry, let me go back there. Karl, would you like  
03:32:10 13 to go to Slide 8?

03:32:24 14 A. Yes.

03:32:24 15 Q. Does that work for you?

03:32:27 16 A. So the other issue here with Karasiuk is there's a  
03:32:30 17 breather line here. And so when you try to pull a vacuum  
03:32:34 18 line here, this breather line will not allow any fluid to  
03:32:39 19 be pulled because it's going to take the path of least  
03:32:43 20 resistance. I call it the cracked straw phenomenon. If  
21 you've ever tried to drink a drink through a straw that's  
22 slightly cracked and you get a little leak in it, you  
23 just get air and you can't pull the solution.

03:32:51 24 So Karasiuk made a mistake and put a vacuum breather  
03:32:58 25 line on the reservoir supply side and not on the vacuum

side. So it would not work for that reason just alone.

Then there's another problem with this combination if we go to the next slide. So in Palmer, there's a peristaltic pump. That peristaltic pump will not allow free flow because there's always a portion of the valve -- it's a roller-type valve. Can we go back to that peristaltic pump in Palmer just for one second?

Right here. So if we zoom here, this is the peristaltic pump in Palmer. And if you notice, there's little rollers that are right there, and then there's another one here. So you can never get free flow in this situation. It's a positive pump.

Now if we go back to the combination, so now that peristaltic pump is gone. So if you have these containers here up above the handpiece here, the fluid will just free flow right through it by gravity.

But then you might say, well, what if you put the containers, either ones, below. Well, then when you turn the vacuum on, assuming this is removed, then the fluid would come to the handpiece, and then it would go back. So you wouldn't be able to do the procedure. Every time you stopped the vacuum the solution would go right back to the containers. And you don't want to rub a person's face with a dry handpiece. You want to have that solution there all time.

03:34:43 1 So every time you turn the vacuum on and off, that  
03:34:46 2 solution would go back. If the solution bottles are  
03:34:50 3 above the handpiece, they would just free flow through.  
03:34:51 4 So the combination just simply doesn't even work.

03:34:58 5 Q. Thank you, Karl. You mentioned a moment ago the  
03:35:03 6 switch and whether that switch was a manifold. Well,  
03:35:07 7 there's another example in this combination where it  
03:35:13 8 gives more detail about that quote, unquote, switch or  
03:35:17 9 what defendants are pointing to as a manifold.

03:35:20 10 Can you explain your opinion as to whether that's a  
03:35:30 11 manifold or not?

03:35:31 12 A. Yes, sure. In the patent itself, it's called a  
03:35:33 13 selector valve means 20. It's not called a manifold.  
03:35:38 14 And a person of skill in the art like myself can also see  
03:35:42 15 that it's not a manifold.

03:35:44 16 If you look in that right picture there where that  
03:35:46 17 yellow path is, there's only one way in and one way out.  
03:35:50 18 It's not a manifold that allows multiple inlets and one  
03:35:54 19 outlet.

03:35:55 20 Q. And does Palmer equate that the box on the figure we  
03:36:00 21 were looking at before with this selector valve means in  
03:36:04 22 the patent; do you recall?

03:36:05 23 A. Can you repeat that, please? I don't understand  
03:36:08 24 your question.

03:36:09 25 Q. I guess what I'm getting at is the Figure 1 that we

03:36:15 1 were looking at before that you annotated that was more  
03:36:18 2 of a diagram, do you consider this to be like an  
03:36:23 3 embodiment or the physical-type structure associated with  
03:36:27 4 that diagram?

03:36:28 5 A. Yes, that was a schematic-type diagram we were just  
03:36:35 6 looking at. And then this is the physical device that's  
03:36:38 7 shown in this figure. We call it a rotary valve, or here  
03:36:42 8 it's called a selector valve. It's a rotary switch you  
03:36:45 9 select which tube you want to have fluid come from. It's  
03:36:53 10 not a manifold.

03:36:54 11 Q. And then we skipped past a point here, but can you  
03:36:59 12 briefly give us your opinion as to whether a person  
03:37:07 13 skilled in the art like yourself would have been  
03:37:08 14 motivated to combine Karasiuk and Palmer?

03:37:08 15 A. Yes. So there's not motivation to do it. First of  
03:37:09 16 all, there's not a problem to be solved. They're not  
03:37:20 17 analogous art. This is a hindsight bias where it's --  
03:37:21 18 the HydraFacial system is an automated system that has a  
03:37:25 19 lot of components that works with multiple solutions.

03:37:29 20 There wasn't a problem in Karasiuk design or hasn't  
21 been thought of to use multiple solutions with Karasiuk  
03:37:37 22 in an automated sense. It's not disclosed in Karasiuk.  
03:37:41 23 It's not disclosed in Palmer. And there's just no  
03:37:42 24 motivation to put the two together. They're completely  
03:37:45 25 different art.

03:37:46 1 Q. Thank you. Mr. Leinsing, we've already discussed  
03:37:52 2 the secondary considerations, but I wanted to move on and  
03:37:55 3 we can take a look at the disputed limitations related to  
03:38:00 4 infringement briefly. So we have Claim 1 of the 052  
03:38:05 5 Patent, and you've highlighted in red that disputed  
03:38:12 6 limitation related to the manifold in the 052 Patent.

03:38:14 7 A. That's correct.

03:38:15 8 Q. Okay. And so you took a look of Professor Slocum's  
03:38:21 9 opinion on this issue; is that right?

03:38:23 10 A. Yes, that's correct.

03:38:24 11 Q. Do you have an opinion on whether or not it was a  
03:38:29 12 correct view of the manifold in the accused product?

03:38:36 13 A. Yes. I did my analysis of the device, and I found a  
03:38:40 14 manifold here that's in the green box as shown. And I  
03:38:45 15 believe Professor Slocum in his declaration, he also said  
03:38:47 16 that, quote, the green box could potentially qualify as a  
03:38:51 17 manifold.

03:38:51 18 I agree it's a manifold and it's found in the AMP  
03:38:55 19 device; therefore, it would infringe the 287 Patent  
03:39:04 20 patent claim, Claim 22. Or, I'm sorry, the 052 Patent,  
03:39:09 21 Claim 1.

03:39:10 22 Q. Thank you. And then moving on to the Claim 22 of  
03:39:15 23 the 287 Patent. You've highlighted the disputed term in  
03:39:18 24 Claim 22, and that relates to the term "fluid  
03:39:21 25 communication".

03:39:22 1 A. That's correct.

03:39:24 2 Q. And so what do you understand the term "fluid  
03:39:28 3 communication" to mean as a skilled artisan?

03:39:33 4 A. So first, fluid communication is a term of art.  
03:39:37 5 It's commonly used. I've used it in some of my patents.  
03:39:41 6 I believe Dr. Slocum's used this term in some of his  
03:39:44 7 patents. Fluid communication is basically talking about  
03:39:47 8 the plumbing between the structures, that they're  
03:39:51 9 fluidically connected.

03:39:53 10 And then, in fact, Professor Slocum also mentioned  
03:39:56 11 in his declaration that he was talking about being  
03:40:00 12 fluidically connected between two systems. This is a  
03:40:01 13 term of art that is often used.

03:40:10 14 Q. And so do you have an opinion as to whether the  
03:40:16 15 AMP-accused product satisfies this limitation of the 287  
03:40:20 16 Patent?

03:40:20 17 A. Yes. So this claim element is looking for a fluid  
03:40:25 18 communication between the vacuum source and the  
03:40:28 19 handpiece. And I did my analysis. You can see there's  
03:40:32 20 plumbing all the way from the handpiece to the vacuum  
03:40:35 21 source. If it wasn't fluidly communicating with the  
03:40:40 22 vacuum source, you wouldn't have the suction at the  
03:40:43 23 handpiece. So it's clearly in fluid communications.

03:40:47 24 Fluid in the term "fluid communication" has a  
03:40:51 25 broader sense to it. It could be air or liquid or

03:40:55 1 anything. It just means that the two things are plumbed  
03:40:58 2 together in order for them to communicate with one  
03:41:02 3 another. And they're clearly doing that here.  
03:41:06 4 Otherwise, you wouldn't get a vacuum on the person's  
03:41:10 5 hand.

03:41:12 6 **MR. ANGER:** That's all I have with Mr. Leinsing,  
03:41:15 7 Your Honor. You can let us know if you have any  
03:41:20 8 questions.

03:41:21 9 **THE COURT:** Thank you. Let's see if defense has  
03:41:23 10 any questions.

03:41:25 11 **MR. RADER:** Thank you, Your Honor.  
12 Mr. Bookbinder, if we could have Palmer Exhibit 5. And  
13 let's pull up Figure 1.

14 **CROSS-EXAMINATION**

15 **BY MR. RADER:**

16 Q. Mr. Leinsing, I just want to make sure I understand  
17 your testimony about Palmer.

18 **MR. RADER:** And Mr. Bookbinder, if you could  
03:41:44 19 rotate -- perfect.

03:41:44 20 **THE COURT:** And again, it's Exhibit 5 from  
03:41:53 21 ECF 69. Go ahead.

03:41:56 22 **BY MR. RADER:**

03:41:57 23 Q. Okay. So Mr. Leinsing, you recognize that there are  
03:42:00 24 six solution bottles shown in Figure 1?

03:42:05 25 A. Yes, that's correct.

03:42:07 1 Q. Those are labeled 12-1 -- sorry. 34 sub 1 through  
03:42:19 2 34 sub 6?

03:42:20 3 A. Correct.

03:42:20 4 Q. And then each of those bottles is connected to  
03:42:24 5 reference numeral number 16 by a line 44 sub something?

03:42:32 6 A. That's correct. It's connected to a selector means  
03:42:35 7 or a switch.

03:42:37 8 Q. Selector valve means 16. Is that what you're  
03:42:42 9 referring to?

03:42:42 10 A. I believe it's 20. I'm not sure what 16 says in the  
03:42:47 11 patent.

03:42:50 12 Q. I believe it's 16, but we're talking about the  
03:42:53 13 rectangle where 16 with an arrowhead is pointing toward a  
03:42:58 14 rectangle at which the six lines from the solution bottle  
03:43:02 15 is terminated. Are we talking about the same item?

03:43:06 16 A. It's the selector valve. Whether it's 16 or 20,  
03:43:10 17 it's that rectangular piece, correct.

03:43:12 18 Q. All right. So that selector valve is connected to  
03:43:14 19 each of the solution bottles through a separate line?

03:43:18 20 A. Yes, that's correct.

03:43:19 21 Q. So there are six inputs to the selection valve, one  
03:43:24 22 for each of the solution lines?

03:43:26 23 A. That's correct, but it's not -- they're not  
03:43:29 24 connected to each other through a manifold. It's a  
03:43:32 25 separate -- separate line.

03:43:35 1 Q. So there are six inputs to the rectangle we're  
03:43:41 2 talking about?

03:43:45 3 A. But they're not all in fluid communication with each  
03:43:50 4 other. There's not six inputs and six outputs all  
03:43:54 5 connected together.

03:43:55 6 Q. So in your opinion for the rectangle to be a  
03:43:58 7 manifold, it would have to be six outputs?

03:44:03 8 A. No, I didn't say that. It could be one input and  
03:44:05 9 six outputs or six inputs and one output. But they all  
03:44:08 10 need to be in fluid communication with each other. They  
03:44:12 11 all need to be open and in fluid communication with each  
03:44:18 12 other.

03:44:20 13 Q. So in order for a device to qualify as a manifold,  
03:44:25 14 the inputs all need to be in fluid communication with  
03:44:28 15 each other and the output?

03:44:31 16 A. Correct.

03:44:31 17 Q. So you need to be able to flow from more than one  
03:44:36 18 input simultaneously?

03:44:42 19 A. Can you repeat that, please?

03:44:44 20 Q. In order to qualify as a manifold, it has to permit  
03:44:48 21 flow from more than one input simultaneously?

03:44:56 22 A. Yes, if it's a manifold, it would allow multiple --  
03:45:00 23 potentially allow multiple inputs and one output.

03:45:07 24 Q. Okay. Thank you.

03:45:08 25 Now, you're here today to defend the validity of the

03:45:12 1 HydraFacial patents, right?

03:45:14 2 A. Correct.

03:45:14 3 Q. You reviewed a number of IPR proceedings?

03:45:18 4 A. I reviewed some of them. I don't know if I reviewed  
03:45:24 5 all of them.

03:45:25 6 Q. Do you recall listing four different IPR proceedings  
03:45:28 7 on Page 65 of your declaration saying you reviewed them?

03:45:33 8 A. If I listed them in my declaration, I've reviewed  
03:45:36 9 them. And I've noted that there's a lot of arguments  
03:45:40 10 particularly in this case that were not mentioned in  
03:45:42 11 those IPRs.

03:45:44 12 **MR. RADER:** If we could have Page 65 from  
03:45:48 13 Mr. Leinsing's declaration, Mr. Bookbinder.

14 **BY MR. RADER:**

03:45:55 15 Q. You list here four IPR proceedings. Did you review  
03:46:02 16 those?

03:46:02 17 A. Yes, if I've listed them here, I've reviewed those  
03:46:06 18 IPRs.

03:46:07 19 Q. So you know that AMP filed an IPR petition against  
03:46:12 20 the 287 Patent, right?

03:46:12 21 A. Yes. But again, there's arguments in those IPRs  
03:46:23 22 that I've mentioned today that are not in those IPRs.  
23 The Patent Office has not seen my arguments -- all of my  
24 arguments.

03:46:24 25 Q. I'm sorry. Maybe you misheard me. Did you review

03:46:28 1 AMP's IPR?

03:46:28 2 A. If it's one of these IPRs, then I've reviewed it.

03:46:31 3 I'm not sure what you mean by AMP's IPR.

03:46:31 4 Q. AMP's IPR is IPR 2025-00145. Did you review it?

03:46:41 5 A. If it's listed here, I reviewed it. But, again,

03:46:45 6 these IPRs do not have my full arguments against the

7 combinations of Karasiuk and Palmer that I mentioned

03:46:52 8 today.

03:46:52 9 Q. You understand that the PTAB decided to institute

03:46:55 10 AMP's IPR 2025-00145?

03:47:03 11 A. I do not know for sure the facts of those IPRs,

03:47:11 12 whether they've been instituted or not. There's so many

13 IPRs. I can't remember which one is which.

03:47:14 14 Q. So you don't know that PTAB found a reasonable

03:47:15 15 likelihood that Karasiuk and Palmer render obvious Claim

03:47:18 16 22 of the 287 Patent?

03:47:20 17 A. I don't know that to be true, but what I do know is

03:47:26 18 that the PTAB does not have the facts that I mentioned

03:47:29 19 today regarding the inoperability of the combination. It

03:47:33 20 is all of the issues that I've mentioned.

03:47:47 21 **MR. RADER:** If we could have the decision on

03:47:49 22 AMP's IPR, Exhibit 2, at Page 18. And if we could pull

03:47:56 23 out the top paragraph.

03:48:07 24 **BY MR. RADER:**

03:48:07 25 Q. Does this refresh your recollection that the PTAB

1 found -- I'm looking at the last sentence, Mr. Bookbinder  
03:48:09 2 -- there's a reasonable likelihood that petitioner will  
03:48:13 3 succeed in demonstrating that claims, including Claim 22  
03:48:17 4 of the 287 Patent, are rendered obvious by Karasiuk and  
03:48:23 5 Palmer?

03:48:25 6 A. Again, I understand that, but they have not seen my  
03:48:29 7 arguments with the Karasiuk and Palmer. And as I've  
03:48:32 8 demonstrated here today, the combination just simply  
03:48:36 9 would not work. And the Patent Office has not had the  
03:48:40 10 benefit of seeing my analysis on this, and I believe they  
03:48:43 11 will change their mind when they see my opinions on that.

03:48:48 12 Q. Well, Mr. Leinsing, let's just -- for completeness,  
03:48:52 13 you understand from reading this that the PTAB found on  
03:48:57 14 the top line that one of ordinary skill in the art would  
03:49:02 15 have been motivated to combine Karasiuk and Palmer,  
03:49:08 16 right?

03:49:09 17 **MR. RAZAI:** Objection. It calls for a legal  
03:49:15 18 conclusion.

03:49:16 19 **THE COURT:** I think we can move on. I think I  
03:49:18 20 get your point, and I think he's going to stick to his  
03:49:21 21 point. So I just think you established what you intended  
03:49:24 22 to establish, and we can move on.

03:49:26 23 **MR. RADER:** Okay.

24 **BY MR. RADER:**

03:49:27 25 Q. So Mr. Leinsing, let's talk about the Eunsung IPR.

03:49:52 1 Are you familiar with Eunsung's IPR against the 287  
2 Patent?

3 A. Again, there's a lot of IPRs. If it's one of the  
03:49:56 4 ones that was listed there, I reviewed it. But I don't  
03:49:57 5 know them by name or number and which one is which. If  
03:50:01 6 you could show it to me or be more specific, I can better  
03:50:05 7 answer your question.

03:50:06 8 Q. Sure. Why don't we take a look at AMP's Exhibit 9.  
03:50:12 9 Is this a declaration that you filed in connection with  
03:50:17 10 an IPR by Eunsung against the 287 Patent?

03:50:25 11 A. It looks like it, yes.

03:50:27 12 Q. So in this case of Eunsung's IPR against the 287  
03:50:32 13 Patent, you did file a declaration with the PTAB; isn't  
03:50:36 14 that right?

03:50:38 15 A. I believe the process is we file an initial  
03:50:41 16 declaration, and there was other things I was asked to do  
03:50:46 17 to this, but I get an additional response to add other  
03:50:50 18 facts and opinions based on the combinations that were  
03:50:55 19 argued.

03:50:56 20 Q. Let's just stick to what we have here. Do you  
03:51:00 21 recall filing this declaration regarding HydraFacial  
03:51:06 22 preliminary response to the Eunsung IPR 2024-01491?

03:51:10 23 A. Yes. And as you said, it's a preliminary response.  
03:51:13 24 I get another chance to respond in a deposition, which I  
03:51:16 25 will clearly outline what I've mentioned today.

03:51:21 1 Q. So you didn't take your best shot in your  
03:51:23 2 declaration that you filed. That's what you're saying?

03:51:27 3 **MR. RAZAI:** Objection. Argumentative.

03:51:30 4 **THE COURT:** I'll let him answer.

03:51:32 5 **THE WITNESS:** So as time is going on, I'm being  
03:51:36 6 presented with additional facts and arguments on the  
03:51:38 7 combinations there expanding as time goes on by the  
03:51:43 8 petitioner. And that's giving me more time to then  
03:51:47 9 understand those argument and then to rebut them. Which  
03:51:50 10 I think I give good reason why there wouldn't be  
03:51:53 11 likelihood of success in putting those together or be  
03:51:58 12 obvious.

03:51:58 13 **BY MR. RADER:**

03:51:58 14 Q. You understand that in the Eunsung IPR, although it  
03:52:05 15 was discretionarily denied despite your declaration, the  
03:52:09 16 PTAB panel found that it met the standard for the merits?  
03:52:14 17 Do you recall that?

03:52:15 18 A. I recall you saying that about this particular  
03:52:21 19 petition, but again, I don't believe I had the full  
03:52:25 20 opportunity to express my opinions like I have expressed  
03:52:28 21 today. And if we went through the full process, they  
03:52:32 22 would see those opinions.

03:52:33 23 Q. If we could have AMP Exhibit 3, and let's turn to  
03:52:37 24 Page 16. This is the PTAB's decision. Last paragraph.

03:52:43 25 Do you see it says: We find that petitioner's

03:52:47 1 obviousness challenges meet the standard for institution?

03:52:55 2 A. I see that, yes.

03:52:56 3 Q. That was after they reviewed your declaration,

03:52:59 4 wasn't it?

03:52:59 5 A. After my preliminary declaration, that's correct.

03:53:03 6 And as I said, I'm given another opportunity to fully

03:53:06 7 analyze the arguments and put together my analysis, and

03:53:11 8 they have not heard what I said today.

03:53:16 9 Q. Let's talk about the 052 Patent for a moment.

03:53:22 10 You've testified that issued patents are presumed valid.

03:53:27 11 Is that your understanding?

03:53:28 12 A. That's my understanding, yes.

03:53:29 13 Q. And the presumption of the validity, of course, is

03:53:33 14 based on an assumption that a patent examiner did things

03:53:38 15 right; isn't that so?

03:53:40 16 A. That's correct. I believe Karasiuk was cited on the

03:53:44 17 face of the patent.

03:53:44 18 Q. And patent examiners sometimes make mistakes, right?

03:53:49 19 A. Sometimes they do. That's correct.

03:53:51 20 Q. You filed a declaration accompanying HydraFacial's

03:53:56 21 preliminary response in the IPR that Eunsung filed on the

03:54:03 22 052 Patent. Do you recall that?

03:54:05 23 A. Could you repeat that, please?

03:54:06 24 Q. Do you recall that Eunsung filed an IPR petition

03:54:10 25 against the 052 Patent?

03:54:11 1 A. Again, if that's the IPR that was listed that I  
03:54:17 2 reviewed, then -- you're mentioning Eunsung and IPRs and  
03:54:21 3 different patents. There's multiple patents.

03:54:24 4 Q. You don't remember whether you did or didn't file a  
03:54:27 5 declaration in opposition to Eunsung's IPR on the 052  
03:54:33 6 Patent?

03:54:33 7 A. I believe I did, but I would need to just refresh my  
03:54:37 8 memory and see the document.

03:54:39 9 Q. Okay. Do you remember that HydraFacial asked for  
03:54:45 10 Eunsung's IPR on the 052 Patent to be discretionarily  
03:54:49 11 denied?

03:54:52 12 A. I believe that may be true. I don't know all the  
03:54:55 13 legal aspects of the filing.

03:54:57 14 Q. Did you ever have occasion to review the USPTO  
03:55:03 15 director's ruling on that discretionary denial request?

03:55:10 16 A. I don't recall.

03:55:13 17 Q. If we could have AMP Exhibit 22, Page 3. Middle  
03:55:22 18 paragraph.

03:55:28 19 Do you see that the director of the Patent Office  
03:55:29 20 found that the petitioner's arguments that the office  
03:55:33 21 materially erred are persuasive?

03:55:39 22 A. I see that it says that. That's correct.

03:55:41 23 Q. And then four lines from the bottom at the end of  
03:55:45 24 the line, it says: Petitioner persuasively demonstrates  
03:55:52 25 that the patent examiner overlooked certain teachings in

03:55:56 1 Karasiuk that appear to disclose the allowable features  
03:56:01 2 of the claims? Do you see that?

03:56:02 3 A. I see that, but again, like you said, this was a  
03:56:04 4 discretionary decision that the Patent Office has not had  
03:56:05 5 the benefit of my analysis and what I described today,  
03:56:09 6 which I think clearly shows the combinations with  
03:56:13 7 Karasiuk would not work.

03:56:16 8 Q. But let's be fair --

03:56:18 9 **MR. RAZAI:** Your Honor, I object to this entire  
03:56:21 10 line of questioning on this document. This is a  
03:56:21 11 discretionary denial which only has to do with the legal  
03:56:25 12 standards of whether the PTO will then move to a  
03:56:29 13 merits-based analysis of the petition, which is where the  
03:56:30 14 expert's testimony comes in.

03:56:32 15 Mr. Rader is asking Mr. Leinsing regarding a legal  
03:56:35 16 document that's based solely on legal standards and has  
03:56:39 17 nothing to do with an evaluation of the merits or of the  
03:56:44 18 mechanical features of the product.

03:56:44 19 **THE COURT:** His objection actually came after  
03:56:47 20 the last answer. Why don't you ask your next question  
03:56:51 21 and let's see if the objection --

03:56:52 22 **MR. RADER:** Sure.

03:56:52 23 **BY MR. RADER:**

03:56:52 24 Q. Sure. I only have one more question on this, which  
03:56:54 25 is, Mr. Leinsing, you understand that the USPTO director

03:56:58 1 said this after you submitted your declaration?

03:57:01 2 **MR. RAZAI:** Same objection, Your Honor. That  
03:57:03 3 has nothing to do with Mr. Leinsing's declaration.

03:57:06 4 **THE COURT:** Isn't this an opinion that would  
03:57:08 5 have taken into account his declaration?

03:57:12 6 **MR. RAZAI:** No. This is an opinion, Your Honor,  
03:57:13 7 where that has to be a showing that the art is being  
03:57:17 8 looked at for the -- that the PTAB isn't being asked to  
03:57:23 9 redo work that was already done. And it's an argument by  
10 the other side by -- I don't know whether it was -- I  
03:57:24 11 believe it was -- it wasn't AMP who made the argument.  
03:57:27 12 It was the petitioner. I think it was Eunsung who said,  
03:57:33 13 look, there were some material errors there, which that  
14 was adopted.

03:57:36 15 That has nothing to do with the merits of the actual  
03:57:39 16 -- of the petition.

03:57:42 17 **THE COURT:** Well, let me say, his understanding  
03:57:44 18 of whether she looked at this declaration before issuing  
03:57:48 19 this opinion is kind of irrelevant anyway. So I'm going  
03:57:52 20 to have you move on. Actually, you said that was your  
03:57:56 21 last question.

03:57:56 22 **MR. RADER:** That was my last question on that  
03:57:59 23 document.

24 **THE COURT:** Oh, okay.

03:57:59 25 **MR. RADER:** New topic.

03:58:00 1                   **THE COURT:** All right.

03:58:02 2                   **MR. RADER:** Mr. Bookbinder, if we could have  
03:58:04 3 Page 10 of Mr. Leinsing's declaration, please, from this  
4 case. Paragraphs 42 and 43.

03:58:18 5                   **BY MR. RADER:**

03:58:18 6                   Q. Here you're setting forth your understanding of some  
03:58:19 7 legal standards for objective indicia of nonobviousness,  
03:58:20 8 right?

03:58:21 9                   A. That's correct.

03:58:29 10                  Q. And you stated your understanding in 43 that a nexus  
03:58:32 11 is presumed between the claimed invention and objective  
12 evidence of secondary considerations of nonobviousness  
03:58:42 13 when a product embodies the claimed invention and is  
03:58:48 14 coextensive with it. Do you see that?

03:58:50 15                  A. Yes.

03:58:50 16                  Q. What does "coextensive" mean?

03:58:54 17                  A. It means that the secondary considerations, if  
03:58:58 18 you're looking at like for the success or for copying, is  
03:59:03 19 coextensive with the actual claimed invention.

03:59:08 20                  Q. Right. And I'm asking you, do you have an  
03:59:12 21 understanding of what the term coextensive means since  
03:59:16 22 you did a secondary considerations analysis?

03:59:22 23                  **MR. RAZAI:** Objection. Asked and answered and  
03:59:23 24 legal conclusion.

03:59:23 25                  **THE COURT:** I think he used the term in his

03:59:25 1 answer. That's kind of a classic problem in defining  
03:59:31 2 something that uses the term.

03:59:33 3 **THE WITNESS:** Yes. I can use -- not use the  
03:59:35 4 word in my understanding. It means that if the -- so  
03:59:38 5 when we say the success, that they're attributable to the  
03:59:43 6 claim elements or the claimed invention, that they have  
03:59:46 7 to be with the actual claim, which is why the analysis  
03:59:49 8 with the Nectre device, with it having all of the other  
03:59:54 9 elements except for the multiple parts -- all of the  
03:59:57 10 other elements that are being accused of the success had  
04:00:01 11 the same success, where the other devices that  
04:00:07 12 HydraFacial sells is embodied by the claimed invention,  
04:00:13 13 has the success where the Nectre did not.

04:00:17 14 That was probably way too -- I can rephrase that if  
04:00:20 15 you want, but I think I answered your question on what  
04:00:24 16 coextensive means.

04:00:25 17 **BY MR. RADER:**

04:00:25 18 Q. Do you know whether it's the case that if multiple  
04:00:28 19 different patents are asserted to cover a product, the  
04:00:31 20 claim of one patent can be considered coextensive with  
04:00:35 21 it?

04:00:36 22 A. I think your question was now wordy like my previous  
04:00:40 23 answer. Can you break that up a little bit?

04:00:43 24 Q. Sure. If a party says I have five different patents  
04:00:47 25 and they are read on this product, legally can any one of

04:00:53 1 them be considered coextensive with it? Do you know?

04:00:55 2 A. If you're asking me a legal question, I cannot  
04:00:59 3 answer.

04:01:02 4 **MR. RADER:** Thank you, Mr. Bookbinder.

5 **BY MR. RADER:**

04:01:03 6 Q. In your declaration you talked about -- last  
04:01:08 7 chapter. In your declaration you talked about a copycat  
04:01:21 8 named Richard Aquila. Do you recall that?

04:01:21 9 A. I don't recall that.

04:01:22 10 Q. Well, wasn't that important because you said copying  
04:01:26 11 can be a secondary consideration of nonobviousness?

04:01:27 12 A. Yes, it can be. That's true. That's my  
04:01:28 13 understanding.

04:01:28 14 Q. What was the name of the person or entity that you  
04:01:32 15 concluded had copied from HydraFacial? What was the name  
04:01:38 16 of the person or entity that you concluded at the end of  
04:01:41 17 your declaration had copied from HydraFacial?

04:01:44 18 A. Can you show me the declaration?

04:01:49 19 Q. Sure. Let's look at his declaration, Page 212,  
04:01:56 20 Paragraph 121.

04:01:58 21 Does this refresh your memory that you concluded  
04:02:19 22 Richard Aquila copied from HydraFacial?

04:02:19 23 A. Yes, that helps. I, I think, pronounced his last  
04:02:21 24 name differently.

04:02:21 25 Q. And that was important because copying is a

04:02:25 1 secondary consideration of nonobviousness; is that right?

04:02:28 2 A. That's correct.

04:02:28 3 Q. You said HydraFacial brought a suit against

04:02:32 4 Mr. Aguila?

04:02:38 5 A. Yes, that's correct. Or I believe it was Edge

04:02:42 6 Systems where their previous name brought a suit against

04:02:45 7 him.

04:02:45 8 Q. And you said that suit was for patent infringement

04:02:50 9 of at least the 052 Patent?

04:02:59 10 A. That's correct.

04:02:59 11 Q. That's one of the two patents on which HydraFacial

04:03:02 12 is basing its preliminary injunction motion?

04:03:06 13 A. That's my understanding.

04:03:08 14 Q. You said HydraFacial received a temporary

04:03:12 15 restraining order, Docket 15?

04:03:16 16 A. That's my understanding, correct.

04:03:17 17 Q. You said HydraFacial received a preliminary

04:03:23 18 injunction, Docket 89?

04:03:26 19 A. That's my understanding.

04:03:28 20 Q. You said HydraFacial received summary judgment of

04:03:43 21 infringement, Docket 225?

04:03:45 22 A. That's correct.

04:03:46 23 **MR. RADER:** Mr. Bookbinder, if we could have

24 *Aguila* Docket 15, please.

25 **BY MR. RADER:**

04:03:48 1 Q. Is this the order granting plaintiff's motion for  
04:03:50 2 temporary restraining order that you were referring to in  
04:03:54 3 your declaration?

04:04:03 4 A. It looks like it, yes.

04:04:10 5 **MR. RADER:** Mr. Bookbinder, if we can go to the  
04:04:13 6 last page, please.

04:04:15 7 **BY MR. RADER:**

04:04:16 8 Q. What's the date on which the judge entered this  
04:04:19 9 order?

04:04:19 10 A. Looks like December 1st of 2014.

04:04:31 11 **MR. RADER:** Mr. Bookbinder, if we could have  
04:04:35 12 *Aguila*, Docket Number 89, please.

13 **BY MR. RADER:**

04:04:38 14 Q. This is a one-page order. And if you'll look on the  
04:04:41 15 second line, it references an application for a  
04:04:45 16 preliminary injunction. Do you see that?

04:04:47 17 A. Yes.

04:04:48 18 Q. And then towards the bottom of the page it says  
04:04:50 19 Docket Entry 89. Do you see that?

04:04:59 20 A. Yes.

04:04:59 21 Q. That's the second order that you referred to in your  
04:05:02 22 declaration; is that right?

04:05:06 23 A. I believe that's correct, yes.

04:05:07 24 Q. What's the date that the judge entered this one?

04:05:13 25 A. Is it February 24, 2015?

04:05:18 1 Q. Okay.

04:05:18 2 **MR. RADER:** Mr. Bookbinder, if we could have  
04:05:21 3 *Aguila*, Docket 225.

04:05:26 4 **BY MR. RADER:**

04:05:26 5 Q. Is this the summary judgment order that you referred  
04:05:28 6 to in your declaration?

04:05:40 7 A. If that has the same docket number, then yes, I  
04:05:46 8 believe that's correct.

04:05:46 9 **MR. RADER:** If we could go to the last page,  
10 Mr. Bookbinder.

11 **BY MR. RADER:**

04:05:49 12 Q. What's the date this order was entered?

04:05:52 13 A. May 9, 2016.

04:05:53 14 Q. So the three orders that you cited in your  
04:05:57 15 declaration were from 2014, 2015, and 2016; is that  
04:06:04 16 right?

04:06:04 17 A. I can't remember all the dates, but if -- that  
04:06:10 18 sounds correct.

04:06:12 19 **MR. RADER:** Mr. Bookbinder, if we could have the  
04:06:15 20 052 Patent.

21 **BY MR. RADER:**

04:06:21 22 Q. What's the date on which the 052 Patent issued?

04:06:32 23 A. January 24, 2017.

04:06:35 24 Q. The *Aguila* case did not involve the 052 Patent, did  
04:06:41 25 it?

04:06:49 1 A. I can't answer that. I don't know whether it was  
04:06:53 2 involved with the case in some way or not.

04:06:56 3 **MR. RADER:** If we could have again Page 212 of  
04:06:59 4 Mr. Leinsing's declaration, Paragraph 121.

04:07:20 5 **BY MR. RADER:**

04:07:20 6 Q. All of these orders issued before the 052 Patent  
04:07:24 7 issued, you understand. The 052 Patent was not at issue  
04:07:26 8 in that litigation, was it?

04:07:29 9 A. If those dates we looked at are correct, that might  
04:07:33 10 be a typo on which patent was in that case. I'd have to  
04:07:37 11 pull up the case to be sure. But I'm familiar with that  
04:07:41 12 case and that copying where he literally took the name  
04:07:46 13 and copied the device, but the patent number maybe is not  
04:07:50 14 correct.

04:07:51 15 **MR. RADER:** No further questions.

04:07:54 16 **THE COURT:** Thank you. Any redirect?

04:07:57 17 **MR. RAZAI:** Yeah, briefly. Just a couple of  
04:07:59 18 quick things. First of all, with respect to  
04:08:04 19 Paragraph 121, Your Honor, that was an error. The actual  
04:08:08 20 paragraph that we want to refer to is Paragraph 123 of  
04:08:12 21 the declaration. And if I can just have Mr. Leinsing go  
04:08:19 22 to Paragraph 123.

23 **REDIRECT EXAMINATION**

24 **BY MR. RAZAI:**

04:08:25 25 Q. Can you read Paragraph 123, please?

04:08:34 1 A. Can you tell me what page it's on?

04:08:54 2 Q. Page 213.

04:08:54 3 **THE COURT:** Can you give me the ECF?

04:08:57 4 **MR. RAZAI:** Yes, Your Honor. Document 42-6.

5 **THE COURT:** Thank you.

6 **BY THE WITNESS:**

04:08:58 7 A. Paragraph 123 says, "I understand that the Court in  
04:09:01 8 its summary judgment decision against Mr. Aguila" -- I'm  
04:09:08 9 adding Mr. in there -- "described Mr. Aguila's copying of  
04:09:12 10 the Tower this way: Bootleg. Clone. Copycat.  
04:09:17 11 Imitation. Knock-off. Palm-off. However one labels a  
12 peddled product that conspicuously capitalizes on  
13 another's intellectual property rights, this case  
04:09:34 14 presents the quintessential example."

15 **BY MR. RAZAI:**

04:09:34 16 Q. And is it your understanding that the product in  
04:09:37 17 that case was identical to the HydraFacial Tower?

04:09:39 18 A. Yes, literally identical. As you can see on the top  
04:09:44 19 of Page 213, you could hardly distinguish between the  
04:09:49 20 two.

04:09:49 21 Q. Have you compared the 052 Patent to the HydraFacial  
04:09:54 22 Tower?

04:09:54 23 A. Yes, I have.

04:09:55 24 Q. And did you find Claim 1 of the 052 Patent to be  
04:10:00 25 covered by the HydraFacial Tower?

04:10:01 1 A. Yes, I have.

04:10:02 2 Q. And so did you -- is it your understanding then that  
04:10:05 3 the identical machine would also be copying the 052  
04:10:11 4 patented features?

04:10:12 5 A. Yes, that's correct.

04:10:13 6 Q. I'd like to go back to some issues on manifold that  
04:10:18 7 seemed to be a little confusing to me. Can you describe  
04:10:18 8 what a manifold is for me?

04:10:20 9 A. So a manifold is either where you have multiple  
04:10:23 10 inputs and one output, like we see in this case, or you  
04:10:29 11 can have one input and multiple outputs.

04:10:33 12 Q. Can a manifold be configured to have only one inlet  
04:10:39 13 flow into the manifold at a time?

04:10:47 14 A. If there are multiple outlets, then yes. You could  
04:10:50 15 have one inlet and multiple outlets.

04:10:55 16 Q. Let's say that you have a manifold that has eight  
04:10:58 17 different inlets. Do you need to have at least two  
04:11:01 18 inlets flowing simultaneously for it to be a manifold?  
04:11:03 19 In other words, do you have to have mixing of chemicals  
04:11:07 20 for it to be a manifold?

04:11:08 21 A. No, you don't have to have mixing of the chemicals  
04:11:12 22 for it to be a manifold.

04:11:14 23 Q. So is it possible to direct a fluid from one inlet  
04:11:18 24 line into the manifold and then direct that into the  
04:11:22 25 outlet to wherever it's going?

04:11:23 1 A. Yes, that's possible.

04:11:25 2 Q. So I'm just not clear how the Palmer reference,  
04:11:29 3 you're saying that wasn't a manifold, the selector means.  
04:11:29 4 Why is that not a manifold? How does that work?

04:11:32 5 A. Because you don't have the -- you don't have the  
04:11:36 6 plumbing where you have multiple inlets all connected to  
04:11:41 7 one outlet.

04:11:42 8 Q. What are they connected to?

04:11:45 9 A. It's just connected to a block that you then can  
04:11:48 10 switch from one to the other.

04:11:51 11 Q. Okay. I guess I am not understanding the difference  
04:11:54 12 between a manifold and a selector means. So is there --  
04:12:00 13 is it an issue of space in between them? What makes a  
04:12:08 14 selector means a -- what did you call it? A circular  
04:12:11 15 valve or something? You mentioned something.

04:12:12 16 A. Yeah, it's called a rotary valve.

17 Q. A rotary valve.

04:12:14 18 A. So all of the tubings coming in from multiple  
04:12:18 19 containers are not all connected to -- we use the word  
04:12:22 20 manifold, but they're not all connected to one lumen  
04:12:26 21 where they are -- then have the one element. So they  
04:12:31 22 could all flow together if you want. You could have one  
04:12:33 23 flow, two flow, but they're all into one common lumen  
04:12:40 24 that then can flow to one outlet. That's a manifold.

04:12:44 25 Q. Does the selector means in Palmer have a lumen that

04:12:49 1 the inlets flow into first?

04:12:54 2 A. Can you repeat that, please?

04:12:56 3 Q. In Palmer, there's multiple inlets, correct? The  
04:13:04 4 Palmer reference.

04:13:05 5 A. The Palmer reference has multiple tubing connection  
04:13:11 6 points, but they're not multiple inlets like a manifold.

04:13:15 7 Q. So the multiple tubing connection points in Palmer,  
04:13:19 8 do they all lead to a central lumen of any sort?

04:13:23 9 A. No, they do not. And that's the difference between  
04:13:26 10 a valve and a manifold.

04:13:31 11 Q. So can we call a lumen a space for the sake of this  
04:13:34 12 conversation?

04:13:35 13 A. Yes.

04:13:35 14 Q. Okay. So what you're saying is that those tubings  
04:13:40 15 don't go into a -- there's no common space in between the  
04:13:43 16 outlet and the inlets.

04:13:46 17 **MR. RADER:** Objection. Leading.

04:13:47 18 **THE WITNESS:** That's correct.

04:13:49 19 **BY MR. RAZAI:**

04:13:50 20 Q. Let's restate that. When we talk about Palmer,  
04:13:54 21 there's multiple tubings, correct?

04:13:57 22 A. Correct.

04:13:59 23 Q. Do those tubings go to a central space?

04:13:59 24 **MR. RADER:** That's also leading. Objection.

04:14:03 25 **THE COURT:** Well, I think he was just

04:14:05 1 establishing what the witness had said before.

2 **BY MR. RAZAI:**

04:14:09 3 Q. So instead of going to -- since they don't go to a  
04:14:12 4 lumen, where do they go? How does the tubing get to the  
04:14:17 5 outlet?

04:14:20 6 A. They're just a dead end. So there are six that are  
04:14:24 7 on the valve switch, and then the other one is just  
04:14:28 8 deciding which one it's going to connect to on the Palmer  
04:14:33 9 reference, where a manifold would have all of these  
04:14:36 10 connected to one central lumen in a manifold.

04:14:43 11 That's not what the switch is. The switch is  
04:14:46 12 different. It's going to each one, but there's no way  
04:14:49 13 that the four inlets could ever communicate with any of  
04:14:55 14 the other ones simultaneously. They're not connected to  
15 a central lumen or space.

04:15:04 16 Q. So you were pointing your fingers out. Those are  
04:15:05 17 the tubings that's coming from the containers, right?

04:15:09 18 A. Correct.

04:15:10 19 Q. And this is a dental irrigation device, right, for  
04:15:13 20 teeth?

04:15:13 21 **MR. RADER:** Objection. Leading.

04:15:14 22 **THE COURT:** I'll allow it to let him establish  
04:15:17 23 the basis for where I think he's going.

04:15:21 24 **BY MR. RAZAI:**

04:15:21 25 Q. And then you were showing your other finger. This

04:15:25 1 other finger that you were touching onto your hand, what  
04:15:27 2 does this represent?

04:15:27 3 A. My other finger is the outlet that I was referring  
04:15:31 4 to.

04:15:31 5 Q. So this is the tubing that goes in, and then you're  
04:15:36 6 saying that this is the outlet.

04:15:38 7 A. Correct.

04:15:38 8 Q. And when you're touching it, how does -- what does  
04:15:41 9 that mean? Why were you touching the outlet to the  
04:15:46 10 tubes? What does that mean?

04:15:47 11 A. Because in the rotary valve or the selector means in  
04:15:51 12 Palmer, the outlet has to be moved from one tube to the  
04:15:55 13 next in order for the flow to go to each one of those  
04:15:59 14 tubes, wherein, a manifold, you don't have to physically  
04:16:02 15 move to any of the other inlets because they're already  
04:16:06 16 all connected to the outlet.

04:16:08 17 Q. They're connected to an outlet? You talked about a  
04:16:13 18 lumen. I'm confused.

04:16:15 19 A. Well, they're already connected to a lumen which is  
04:16:18 20 connected to an outlet.

04:16:21 21 Q. Okay. And you call it a rotary selector, right?

04:16:24 22 A. That's correct.

04:16:24 23 Q. Is that what you called it?

24 A. Correct.

04:16:24 25 Q. What does rotary mean? In this context, how does

04:16:29 1 rotary come into play?

04:16:30 2 A. So the rotary, just because you're selecting six,  
04:16:33 3 and just to make it easier for the user they can rotate a  
04:16:39 4 switch to choose which one of the inputs or which one of  
04:16:42 5 the solution containers you want to flow to the output.

04:16:46 6 Q. So let's go back to what -- we were talking about a  
04:16:50 7 manifold. Does a manifold -- in a manifold, does it  
04:16:54 8 require mixing from more than one inlet?

04:16:58 9 A. No, it does not require that. It would be capable  
04:17:01 10 of that, but it would not require that.

04:17:03 11 Q. Would it require simultaneous flow from more than  
04:17:12 12 one inlet to the outlet?

04:17:13 13 A. It doesn't require that, but it would be capable of  
04:17:17 14 that.

04:17:18 15 **MR. RAZAI:** That's all I have for redirect, Your  
04:17:21 16 Honor.

04:17:21 17 **THE COURT:** In this discussion, if you recall  
04:17:27 18 the rectangular box in Palmer, I think, you and Mr. Rader  
04:17:39 19 had a conversation about whether it's labeled 16 or 20 or  
04:17:42 20 something else. What is that if it's not the output that  
04:17:46 21 allows the different, you called them, tubulars or  
04:17:49 22 whatever, to flow through?

04:17:51 23 **THE WITNESS:** The patent itself calls it a  
04:17:54 24 selector means. So it's a switch that you can, again,  
04:17:58 25 choose which input you want to go through the output.

04:18:04 1                   **THE COURT:** Isn't that what you said a manifold  
04:18:07 2 does?

04:18:08 3                   **THE WITNESS:** But a manifold is not switching  
04:18:11 4 between any of those inputs. All of them could go  
04:18:14 5 together. Two could flow together. One could flow in  
04:18:18 6 the output. There's no -- a manifold itself would not  
04:18:23 7 have that switching means. They're all connected --  
04:18:28 8 they're fluidically connected together.

04:18:31 9                   **THE COURT:** So is the difference between a  
04:18:34 10 manifold and a switch is that in a manifold things could  
04:18:39 11 flow together even though they don't necessary have to,  
04:18:43 12 it's possible?

04:18:43 13                   **THE WITNESS:** That's correct.

04:18:44 14                   **THE COURT:** In a switch, they couldn't?

04:18:45 15                   **THE WITNESS:** They could never.

16                   **THE COURT:** So even if the object of whatever  
17 this device is, there's no desire to have them flow  
18 together. It still is either manifold or not if it could  
19 allow for them to flow together even though that's not  
20 part of the objective of the product.

21                   **THE WITNESS:** That's correct.

22                   **THE COURT:** Okay.

04:19:08 23                   **THE WITNESS:** It's kind of like a -- another  
04:19:09 24 common thing of manifolds, like a car engine. In this  
04:19:14 25 case you have one input and multiple outputs where the

04:19:18 1 intake -- I don't know if you're familiar with how a car  
04:19:20 2 engine works, but the air comes in in a central part  
04:19:24 3 where your air filter is, and then it goes --

04:19:24 4 **THE COURT:** You're going to try and teach me  
04:19:27 5 about another device?

04:19:31 6 **THE WITNESS:** Oh, no. Well, it's --

04:19:32 7 **THE COURT:** Go ahead. I'm sorry.

04:19:34 8 **THE WITNESS:** But that's where in an intake  
04:19:38 9 manifold of a car it works the same way. They're all  
04:19:44 10 interconnected. They're all plumbed together. So you  
04:19:48 11 have four outlets and one inlet, or it could be eight if  
04:19:52 12 it's an eight-cylinder engine. It's all into one.

04:19:54 13 Here we're talking about multiple inputs into one  
04:19:58 14 output. There's no switch in there. It's all plumbed  
04:20:02 15 together. Even if your house, if you want to put cold  
04:20:06 16 water in each one of your rooms in your house, you have  
04:20:09 17 cold water coming in. You have a manifold that  
04:20:14 18 distributes that cold water to all the different rooms in  
04:20:19 19 your house. That's a manifold.

04:20:21 20 But if you have a switch down there and you have one  
04:20:25 21 multiple -- if you have a switch down there, then only  
04:20:26 22 one room at a time could work.

04:20:29 23 **THE COURT:** Okay.

04:20:31 24 **THE WITNESS:** Versus them all being plumbed  
04:20:34 25 together.

04:20:34 1 **THE COURT:** Okay. I think I've got you. Thank  
04:20:38 2 you very much. You may step down.

3 (Witness excused from stand.)

04:20:49 4 **THE COURT:** A brief break has been requested.  
04:20:51 5 So it's 4:20. How much more do we think we have?  
04:20:57 6 Plaintiff mentioned -- do you have another witness?

04:21:01 7 **MR. RAZAI:** Your Honor, we can forego calling  
04:21:04 8 Mr. Savsani, and we can go to the defendant's witness.

04:21:10 9 **THE COURT:** Okay.

04:21:10 10 **MS. RICCIO:** Your Honor, we would like to  
04:21:12 11 briefly cross Mr. Savsani if they're not going to call  
04:21:17 12 him.

13 **THE COURT:** So you want to call him in your  
14 case?

04:21:17 15 **MS. RICCIO:** If they're not going to call him,  
04:21:17 16 we can call him and cross him as an adverse witness.

04:21:22 17 **THE COURT:** Okay. And then?

04:21:24 18 **MS. RICCIO:** And then we have our expert as  
04:21:26 19 well.

04:21:27 20 **MR. RADER:** We have Professor Slocum whose  
04:21:30 21 testimony will be 20 to 25 minutes.

04:21:36 22 We have Mr. Crosby; although, you know, honestly his  
04:21:38 23 testimony is in his declaration. So I would like to  
04:21:41 24 speak with him first, but it's possible we could forego  
04:21:46 25 his testimony.

04:21:47 1 **THE COURT:** Okay. Let's take a 15-minute break  
04:21:50 2 and come back at 25 till five. Thank you.

04:21:56 3 (Recess taken at 4:22 p.m. until 4:35 p.m.)

04:35:40 4 **MR. RAZAI:** Since defendants won't be calling  
04:36:01 5 Mr. Savsani, I'd like to ask him a couple of quick  
04:36:04 6 questions before they cross, if that's okay.

04:36:06 7 **THE COURT:** That's fine. Let's go ahead and  
04:36:09 8 have him come on up.

9 (Oath administered.)

10 **THE COURT:** Mr. Rader, were you going to say  
11 something?

12 **MR. RADER:** I was just going to say I conferred  
13 with Mr. Crosby, and we're planning on not calling him  
14 unless someone else has questions for him. And we'll try  
15 to keep -- I don't know what your deadline is, but we'll  
16 keep Professor Slocum to about 20 or 25 minutes. And I  
17 think based on what we've done we probably don't need  
18 much argument. I just wanted to let Your Honor --

19 **THE COURT:** I agree with that part.

20 **MR. RADER:** Ms. Luster did prepare a brief  
04:37:00 21 argument on the last two factors, and I do want to make  
04:37:00 22 sure that we give her a chance to do that.

04:37:03 23 **THE COURT:** I've taken care of the hard deadline  
04:37:05 24 I had, so it's more a matter of I'd like us all to go  
04:37:12 25 home at some point. Go ahead.

1                   **MR. RAZAI:** And Your Honor --

04:37:14 2                   **THE COURT:** I was going to say, make sure you  
04:37:15 3 ask the witness to state and spell their name for the  
04:37:18 4 record when you start.

5                   **MR. RAZAI:** Yes, Your Honor.

04:37:19 6                   **THE COURT:** For all counsel.

04:37:21 7                   **MR. RAZAI:** And Your Honor, we will have some  
04:37:23 8 questions for Mr. Crosby, who did submit a declaration.  
04:37:27 9 Briefly.

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**VIPUL SAVSANI,**

called as a witness on behalf of the Plaintiff, having  
been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

**BY MR. RAZAI:**

Q. Good evening, Mr. Savsani.

A. Good evening.

Q. Could you please state and spell your name for the  
record.

A. Sure. It's Vipul Savsani. V as in Victor, I, P as  
in park, U-L. Last name Savsani, S-A-V-S-A-N-I.

Q. And Mr. Savsani, you submitted a declaration in this  
case, right?

A. Yes.

Q. And your declaration includes your title at  
HydraFacial, correct?

A. Yes.

Q. So we can dispense with some of those formalities --

**THE COURT:** Be sure to keep your voice up.

**MR. RAZAI:** Sorry. I have a bit of a cold  
today.

**BY MR. RAZAI:**

04:38:05 1 Q. So we can dispense with some of those formalities if  
04:38:05 2 that's okay with you.

04:38:05 3 A. That's fine.

04:38:06 4 Q. Mr. Savsani, do you have familiarity as to the  
04:38:09 5 relationship that HydraFacial has with its customers?

04:38:13 6 A. Ask me the question one more time.

04:38:15 7 Q. Do you know who HydraFacial sells machines to?

04:38:19 8 A. Yes.

04:38:20 9 Q. And who does HydraFacial sells machines to?

04:38:24 10 A. HydraFacial sells machines to like medical channel  
04:38:26 11 like dermoplastic med spas. Also the nonmedical channel,  
04:38:32 12 day spas, salons. And also the single-room institutions,  
04:38:37 13 as well as we are also in wellness where we do sell our  
04:38:40 14 machines to Life Time Fitness, Equinox, all those type of  
04:38:45 15 centers. And also the corporate accounts like Ritz  
04:38:50 16 Carlton and Marriotts and stuff like that.

04:38:52 17 Q. And when you sell a machine to a particular  
04:38:54 18 customer, are there products that then followed on over  
04:38:58 19 the years?

04:38:59 20 A. Yes, absolutely. That's the business model. It's  
04:39:03 21 razor, razor blade business model where we do place our  
04:39:07 22 machines, Elite, Allegro, Syndeo, any of those, and the  
04:39:14 23 consumables would follow. And that is -- as you can see  
04:39:17 24 in the recent years, that is a larger part of our  
04:39:19 25 business.

04:39:20 1 Q. Going back to this razor and razor blade model,  
04:39:25 2 what's the razor and what's the razor blade in your  
04:39:26 3 analogy?

04:39:26 4 A. Razor is the machine itself, and the razor blades  
04:39:31 5 are our consumables and tips.

04:39:34 6 Q. Does HydraFacial sell a single machine to customers?

04:39:40 7 A question just to kind of clarify: Are there times  
04:39:42 8 where there might be multiple machines on an invoice --

9 A. Yes.

04:39:46 10 Q. -- versus single machines?

04:39:46 11 A. Yes. That would be correct. We would sell single  
04:39:51 12 unit, and we would have sales where customers do purchase  
04:39:55 13 multi units at a time.

04:39:57 14 Q. Are there a significant number of sales where  
04:40:01 15 there's only a single machine sold?

04:40:03 16 A. Yes, a lot of times our single unit sells that we do  
04:40:09 17 see on the increment side of the business.

04:40:12 18 Q. And are there instances where a customer who has  
04:40:17 19 never purchased from HydraFacial purchase single  
04:40:22 20 machines?

04:40:22 21 A. Yes, they would purchase single systems.

04:40:25 22 Q. Are there instances where those customers then later  
04:40:28 23 in the future would buy another machine from HydraFacial?

04:40:32 24 A. Yes, that would be correct. Usually there's a  
04:40:35 25 ramp-up period for them to build their business and their

04:40:38 1 customer types, and eventually in a couple of years down  
04:40:41 2 the road they do purchase incremental system, extra  
04:40:46 3 system.

04:40:46 4 Q. And would it be easy to quantify how much revenue  
04:40:50 5 you would derive from a single customer that you sold one  
04:40:53 6 machine to if you were to take into account how many  
04:40:57 7 other machines you could sell in the future?

04:40:59 8 A. Yes, we can run analysis on customer with single  
04:41:04 9 system and the revenue associated with those systems.

04:41:07 10 Q. But are you aware under the patent laws whether or  
04:41:10 11 not you would be entitled to damages from that?

04:41:12 12 A. I would have to defer to my legal team. I would  
04:41:18 13 not.

04:41:18 14 Q. You don't know?

04:41:23 15 A. I wouldn't know.

04:41:25 16 Q. Okay.

04:41:25 17 MR. RAZAI: Thank you, Your Honor. That's all I  
04:41:26 18 have.

04:41:27 19 THE COURT: Thank you.

20 CROSS-EXAMINATION

21 BY MS. RICCIO:

04:41:43 22 Q. Thank you, Mr. Savsani. HydraFacial sent a letter  
04:41:44 23 to AMP October 10, 2023, accusing them of patent  
04:41:50 24 infringement, right?

04:41:51 25 A. That's my understanding, yes.

04:41:54 1 MS. RICCIO: Can we put up that letter?

2 BY MS. RICCIO:

04:42:04 3 Q. If we look at the third paragraph, it says in the  
04:42:06 4 middle of that paragraph: HydraFacial takes infringement  
04:42:11 5 of its patent rights very seriously. Right?

04:42:14 6 A. Yes, it does.

04:42:15 7 Q. And at the bottom of this page, it says:  
8 HydraFacial vigorously enforces its intellectual property  
04:42:20 9 rights.

04:42:20 10 A. Yes, it does.

04:42:21 11 Q. If we turn to the next page, HydraFacial, in the  
04:42:44 12 second to last paragraph, demands that AMP confirm within  
04:42:33 13 15 business days that it will fully comply with  
04:42:37 14 HydraFacial's demand?

04:42:39 15 A. Yes, I see that here.

04:42:41 16 Q. Okay. How long before this October 10, 2023 letter  
04:42:50 17 did HydraFacial become aware of AMP's AquaFirme products?

04:42:54 18 A. I would have to defer that to my legal team. I  
04:42:58 19 don't know that.

04:42:58 20 Q. Your background is in finance, right?

04:43:01 21 A. Yes, that's correct.

04:43:02 22 Q. And in 2023, what was your position with  
04:43:06 23 HydraFacial?

04:43:07 24 A. I was director of international financial planning  
04:43:11 25 and analysis.

04:43:12 1 Q. Okay. And are you aware that AMP started selling  
04:43:19 2 its AquaFirme in February of 2023? I'm sorry, February  
04:43:24 3 of 2022?

04:43:24 4 A. I would not know that.

04:43:25 5 Q. It didn't come across your desk in your role as, I  
04:43:31 6 think you said, director of finance?

04:43:33 7 A. No, it did not come through my desk, no.

04:43:36 8 Q. Now, AMP didn't stop selling after receiving this  
04:43:44 9 October 10, 2023 letter, right?

04:43:46 10 A. That's, I think, my understanding. That's why we're  
04:43:49 11 here.

04:43:50 12 Q. It didn't stop selling within those 15 business days  
04:43:54 13 that HydraFacial demand that it stop selling?

04:43:57 14 A. That's my understanding, yes.

04:43:59 15 Q. But even though AMP continued selling, HydraFacial  
04:44:03 16 waited nine months before filing this lawsuit, right?

04:44:07 17 A. Sure. If that's what the timeline is, yes.

04:44:10 18 Timeline-wise, I would defer to my legal team.

04:44:14 19 Q. And HydraFacial didn't file a motion for preliminary  
04:44:20 20 injunction at the time it filed this lawsuit in July  
04:44:23 21 of 2024, right?

04:44:23 22 A. I would not -- once again, I would defer to my legal  
04:44:27 23 team.

04:44:27 24 Q. Did you know HydraFacial didn't file a motion for  
04:44:31 25 preliminary injunction until roughly six weeks ago,

04:44:34 1 June 13, 2025?

04:44:38 2 A. I'm sure it's probably in the timeline in the  
04:44:43 3 declaration form that was probably filled out.

04:44:47 4 Q. And that's 20 months after HydraFacial first sent  
04:44:51 5 this letter on October 10, 2023?

04:44:54 6 A. Sure.

04:44:56 7 Q. Now, HydraFacial has sued a number of other  
04:44:59 8 competitors for patent infringement as well, right?

04:45:05 9 A. Yes, we have.

04:45:06 10 Q. It's brought 12 cases, I believe, in district courts  
04:45:14 11 relating to the 052 and the 287 Patents?

04:45:19 12 A. Yes, I believe so. Yes.

04:45:19 13 Q. And it's only filed motions for preliminary  
04:45:23 14 injunction in two of those cases?

04:45:24 15 A. That's way above my understanding of the cases and  
04:45:27 16 the terms.

04:45:34 17 Q. Let's pull up your declaration that you submitted.  
04:45:47 18 Your declaration that you submitted doesn't speak to the  
04:45:50 19 issue of reputational harm if an injunction is granted --  
04:45:56 20 is not granted, right?

04:46:01 21 A. That's correct.

04:46:01 22 Q. The word "reputation" doesn't appear in this  
04:46:12 23 declaration?

04:46:13 24 A. I'd have to read through it again, but that's  
04:46:14 25 probably true.

04:46:15 1 Q. Even though reputational harm is one of the things  
04:46:17 2 that HydraFacial argued in its brief that it would suffer  
04:46:21 3 if it wasn't granted an injunction?

04:46:28 4 A. Yes, reputation would be impacted, yes.

04:46:31 5 Q. Let's discuss briefly HydraFacial's reputation.  
04:46:35 6 HydraFacial had to recall its Syndeo devices, right?

04:46:41 7 A. Yes, we had some difficulties with our devices.

04:46:44 8 Q. It wrote off over \$18 million in inventory of the  
04:46:49 9 Syndeo devices?

04:46:50 10 A. Yes, that's correct.

04:46:51 11 Q. And you received customer complaints about clogging  
04:46:55 12 in the devices?

04:46:56 13 A. Yes, there were multiple -- yes, I think that was  
04:46:57 14 one of the issues, yes.

04:46:58 15 Q. And there were also customer complaints about poor  
04:47:02 16 suction in the devices?

04:47:03 17 A. Probably, yes. Uh-huh.

04:47:07 18 Q. There are a number of ongoing lawsuits that arose  
04:47:12 19 out of those issues with the Syndeo, right?

04:47:15 20 A. Yes, that's my understanding.

04:47:19 21 Q. There was at least one lawsuit that alleged  
04:47:23 22 violations of federal security law by not disclosing  
04:47:26 23 issues with these devices?

04:47:29 24 A. It was something with SEC, yes.

04:47:32 25 Q. There's a few derivative actions in Delaware

04:47:38 1 relating to disclosures about these devices?

04:47:41 2 A. Yes.

04:47:41 3 Q. And there's a consumer class action as well about  
04:47:45 4 the Syndeo devices, correct?

04:47:47 5 A. Yes, that's correct.

04:47:48 6 Q. And HydraFacial's parent company, Beauty Health  
04:47:51 7 Company, also received a subpoena for an SEC  
04:47:55 8 investigation?

04:47:55 9 A. Yes, that's my understanding.

04:47:58 10 **MR. RAZAI:** Objection. Relevance, Your Honor.

04:48:00 11 **THE COURT:** I'm a little unsure of it. I was  
04:48:05 12 giving her some leeway, but I don't know that any of this  
04:48:09 13 is relevant.

04:48:11 14 **MS. RICCIO:** Well, so in their brief they argued  
04:48:13 15 that one of the ways they will suffer irreparable harm is  
16 harm to their reputation. We believe, and we've argued  
17 in our position, that they don't have any proof about  
04:48:25 18 what their reputation is. But, in fact, the 10-K filing  
04:48:27 19 that we have submitted in connection with our opposition  
04:48:30 20 goes through all these other issues. This is the  
04:48:31 21 starting point of what their reputation is.

04:48:34 22 And so I think that's what Your Honor should  
04:48:36 23 consider when she considers the irreparable harm argument  
04:48:41 24 on reputation.

04:48:45 25 **MR. RAZAI:** I'm not sure how this goes to the

1 harm of the reputation in terms of trying to --

2 **THE COURT:** You've got to speak up.

04:48:46 3 **MR. RAZAI:** Sorry. I'm not sure how talking  
04:48:49 4 about SEC letters somehow talks -- goes to the issue of  
04:48:54 5 harm to our reputation.

04:48:55 6 **THE COURT:** I guess when you were talking about  
04:48:58 7 recalled devices, I get that that's part of an argument.  
04:49:03 8 As you get further and further afield and talk about SEC  
04:49:09 9 investigations, I think that's where it kind of loses a  
04:49:10 10 little bit of steam.

04:49:12 11 **MS. RICCIO:** That's fine. I'll move on.

04:49:16 12 **BY MS. RICCIO:**

04:49:16 13 Q. Now, let's put your declaration back up, and I want  
04:49:21 14 to look -- let's advance to the next page. I think two  
04:49:25 15 more. So Paragraph 11.

04:49:32 16 Now, your declaration says that an expert for  
04:49:35 17 HydraFacial estimated in connection with a previous  
04:49:37 18 litigation that HydraFacial generated a certain amount of  
04:49:40 19 profit per month in consumables for each sale of a  
04:49:47 20 HydraFacial system, right?

04:49:48 21 A. Yes.

04:49:48 22 Q. What kind of case was that in?

04:49:50 23 A. That was one of the consumables of the case where we  
04:49:54 24 wanted to see potentially how much was the counterfeit  
04:49:57 25 and what's the potential impact of that to the business

04:50:01 1 and the profit.

04:50:02 2 Q. Okay. And was this an expert that HydraFacial  
04:50:05 3 retained?

04:50:05 4 A. That's my understanding, yes.

04:50:07 5 Q. And HydraFacial had confidence in its expert's  
04:50:13 6 opinion in that case?

04:50:14 7 A. Yes.

04:50:24 8 Q. Your background -- I believe we went over this.  
04:50:27 9 Your background is in finance, right?

04:50:29 10 A. That's true.

04:50:30 11 Q. You're not an engineer?

04:50:32 12 A. That's correct.

04:50:32 13 Q. And so you're not offering any technical opinions on  
04:50:36 14 whether any particular product infringes or doesn't  
04:50:43 15 infringe the 052 Patent or the 287 Patent?

04:50:53 16 A. That's correct.

04:50:54 17 **MS. RICCIO:** That's all I've got.

04:50:56 18 **THE COURT:** Any redirect?

19 **MR. RAZAI:** Briefly.

20 **REDIRECT EXAMINATION**

21 **BY MR. RAZAI:**

04:51:06 22 Q. Mr. Savsani, have you heard of Project Restore?

23 A. Yes.

24 Q. What is that?

25 A. Project Restore is following the Syndeo challenges

1 that we had in the past when we initially launched. So  
04:51:06 2 Project Restore was put in place to really provide all of  
04:51:11 3 our customers an opportunity to exchange their machine  
04:51:14 4 with a newer machine. But it was still Syndeo, but there  
04:51:17 5 was an opportunity for them to return their old machine,  
04:51:22 6 and then we would give them a brand new machine as a part  
04:51:25 7 of that Restore project.

04:51:29 8 Q. Was there ever an actual recall of the machine, or  
04:51:33 9 were you referring to the project?

04:51:33 10 A. No, it was not a recall. It was -- as a business,  
04:51:36 11 we thought that was the right thing to do and we ended up  
04:51:39 12 -- because a lot of systems were still part of under  
04:51:44 13 warranty. And as a result for the good customer service,  
04:51:47 14 we did end up doing this Project Restore where we did  
04:51:52 15 replace all the Syndeos out there.

04:51:54 16 Q. Ms. Riccio was talking about your -- HydraFacial's  
04:51:57 17 reputation a second ago, correct?

04:51:57 18 A. Yes.

04:51:58 19 Q. So let's talk about that reputation. Who is the  
04:52:00 20 market leader in hydrodermabrasion?

04:52:02 21 A. HydraFacial. We are.

04:52:03 22 Q. Who has the most experience in the industry in  
23 hydrodermabrasion?

04:52:08 24 A. We do, HydraFacial does.

04:52:09 25 Q. If customers find a bad reputation about

04:52:15 1 hydrodermabrasion, even if it comes from a different  
04:52:18 2 source, does that affect HydraFacial's ability to serve  
04:52:22 3 into the market?

04:52:24 4 A. I think it does. To me, it does impact --

04:52:26 5 **THE COURT:** I'm not sure, are you --

04:52:26 6 **MS. RICCIO:** Yeah, I have an objection. I think  
04:52:29 7 it calls for speculation. I think it goes outside the  
04:52:34 8 scope.

04:52:34 9 **THE COURT:** It's not outside the scope. I don't  
04:52:42 10 know if it's speculation. But it's not an issue here. I  
04:52:46 11 mean, you're not saying they make bad devices. You're  
04:52:50 12 saying they make your device.

13 **MR. RAZAI:** What I'm getting to, Your Honor, is  
04:52:53 14 the fact that when there is an entrant into the market  
04:52:53 15 where the originators who have the reputation or have the  
04:52:56 16 experience don't control the device, it could result in a  
04:53:00 17 loss of appetite because that reputation is affected.

04:53:03 18 **THE COURT:** But that's not an issue here, is it?

04:53:06 19 **MR. RAZAI:** It's reputational harm. That's for  
04:53:09 20 the reputational harm.

04:53:09 21 **THE COURT:** Reputational harm is.

22 **MR. RAZAI:** Yeah.

04:53:10 23 **THE COURT:** But you're not saying -- forgive me  
04:53:13 24 if I've missed this issue, but I haven't seen the issue  
04:53:18 25 that you're accusing them of producing something bad

that's going to hurt HydraFacial's reputation.

**MR. RAZAI:** That's a great point. So where I'm going is there was this issue of reputation that was raised, reputational harm.

**THE COURT:** Right.

**MR. RAZAI:** And with respect to reputational harm, not -- when you have a market that's a one-player market because of a government-granted monopoly, and you have another entrant into the market, that doesn't have the experience, and HydraFacial can't control it, they can't control the appetite in the marketplace, which then could affect sales that can't be quantified. That's where I was going with that, Your Honor.

**THE COURT:** I didn't think that was your argument on reputational harm. I thought it was you don't want their product out there. People are going to just go to their product and think they're the leaders in the area.

**MR. RAZAI:** Yeah, so that is one of the arguments, but since reputation was open -- I can --

**THE COURT:** Just move on.

**MR. RAZAI:** It's okay, Your Honor. But with respect to what you were saying, Your Honor, there was a couple of layers. One was the consumable sales, which we were talking about quantifiable. But then also the

04:54:21 1 follow-on sales of units, which cannot be recovered in  
04:54:25 2 patent law damages. That's something that we just can't  
04:54:28 3 recover even if we share that. They would have bought  
04:54:31 4 more machines. Whether it's speculative or not  
04:54:36 5 speculative or quantifiable, we just wouldn't be entitled  
04:54:37 6 to that pecuniary harm under the patent law. So that  
04:54:41 7 would be an irreparable harm.

04:54:46 8 **THE COURT:** Okay.

04:54:46 9 **MR. RAZAI:** That's all the questions that I had  
04:54:51 10 for Mr. Savsani, Your Honor.

04:54:51 11 **THE COURT:** Okay, great. You may step down.

12 (Witness excused from stand.)

13 **THE COURT:** If y'all don't mind, we're going to  
04:55:09 14 swear in our U.S. Attorney.

04:55:09 15 (Brief break.)

04:58:51 16 **THE COURT:** Have the plaintiffs completed their  
04:58:53 17 proof?

04:58:53 18 **MR. RAZAI:** Yes, Your Honor.

04:58:55 19 **THE COURT:** Defendants?

04:58:56 20 **MR. RADER:** You Honor, the defendant calls  
04:59:00 21 Professor Alexander Slocum. And, Your Honor, I have some  
04:59:10 22 inner workings of product. May I first approach opposing  
04:59:16 23 counsel to let them have a look at it?

04:59:21 24 **THE COURT:** Sure.

04:59:22 25 **MR. RAZAI:** I can see. That's fine.

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**MR. RADER:** Thank you.

**THE COURT:** Let's go ahead and swear in the  
witness.

(Oath administered.)

\* \* \*

**ALEXANDER SLOCUM,**

called as a witness on behalf of the Defendant, having  
been first duly sworn, testified as follows:

**DIRECT EXAMINATION**

**BY MR. RADER:**

Q. Professor, please state and spell your name for the  
record.

A. Alexander Slocum. A-L-E-X-A-N-D-E-R, S-L-O-C-U-M.

Q. Professor, please introduce yourself to the judge.

A. Good afternoon. I am currently the Walter and Hazel  
May Professor of Mechanical Engineering at the  
Massachusetts Institute of Technology in Cambridge,  
Massachusetts. I'm 64 years old. I dropped out of high  
school. Went to MIT. I was a hotrod enthusiast as a  
young person. Built a lot of cars.

My mother was a mathematician. My father was a  
physicist. So that's the background of which I come  
from. Very hands on but very analytical. I have to -- I  
can get to where I want to go faster if I understand the  
math and the physics behind the physical elements.

And my whole life has been machinery, machine tools,  
medical devices. I heard the Constitution mentioned

05:00:52 1 earlier. I worked at the Bureau of Standards for many  
05:00:55 2 years in addition to the offshore oil industry where I've  
05:01:01 3 designed a lot of drill bits, tools, you name it, all  
05:01:04 4 fluidic devices.

05:01:05 5 I was at the Bureau when we redid the encasements  
05:01:10 6 for the Documents of Freedom in the U.S. Archives. Later  
05:01:13 7 on in Massachusetts for the 250th anniversary, they  
05:01:18 8 wanted to display their documents. You can have air or  
05:01:21 9 light, but you can't have both because otherwise the  
05:01:26 10 parchment will deteriorate. The reason I mention that is  
05:01:32 11 there are some very specific manifolds in the devices  
12 that hold those documents.

05:01:36 13 So my graduate student and I designed the  
05:01:36 14 encasements for the Massachusetts documents. Rhode  
05:01:41 15 Island has their documents that way. And I actually  
05:01:44 16 touched the documents with my bare hands because  
05:01:49 17 parchment cannot be touched by anything other than skin.  
05:01:52 18 I just bring that up because there's quite a lot of  
05:01:55 19 piping in manifolds, and we've been hearing a lot of this  
20 discussion.

05:02:00 21 I also design construction equipment, surgical  
05:02:02 22 tools, all fluids -- fluid handling. And I've been doing  
05:02:06 23 teaching for 40 years, thousands of students. I work  
05:02:09 24 with industry next week. I'm in the Bay area teaching a  
05:02:13 25 major semiconductor company. I routinely go and give

05:02:20 1 refresher courses to engineers on how to design these  
05:02:21 2 systems. That's who I am.

05:02:22 3 Q. Professor, just to make it current, can you tell the  
05:02:25 4 Court what projects you're working on this summer?

05:02:27 5 A. Okay. Food handling systems for carbon capture.  
05:02:33 6 Eye surgery tool, a special new one, where we can inject  
05:02:38 7 the drugs directly where they're needed in the eyes.  
05:02:41 8 They need very minute quantities.

05:02:45 9 A big solar energy project is happening. A new type  
05:02:50 10 of cutting tool system for a major phone manufacturer so  
05:02:54 11 they can make things faster. It's all fluid-based  
05:03:00 12 systems.

05:03:01 13 I'm a member of the National Academy of Engineering  
05:03:11 14 where I routinely work on -- we are asked to comment on  
15 things. That's a service of the government that we do.  
16 I work with the National Lab, steel on devices. As I  
05:03:14 17 mentioned, I worked for the Bureau of Standards for many  
05:03:16 18 years.

05:03:17 19 So those are some of the projects I'm working on  
05:03:20 20 this summer. And battery swap is another one where you  
05:03:24 21 have to cool the batteries properly. Otherwise they  
05:03:27 22 catch on fire, which we've all heard on in cars, which  
05:03:31 23 are bad. That's a bad thing if they're not cooled right.

05:03:33 24 Q. How much of your time do you spend doing expert  
05:03:36 25 work?

05:03:36 1 A. I do two flavors of expert work, so somewhere  
05:03:40 2 between five and ten percent of my free time total. I do  
05:03:45 3 forensic work for why have things failed and whose fault  
05:03:49 4 it was because you've got to track down that. And then  
05:03:52 5 also on patents like we're doing here. Expert witnessing  
05:03:56 6 on patents. But all from a technical perspective. I'm  
05:04:00 7 not a lawyer.

05:04:00 8 Q. Given how busy you are, why do you do the expert  
05:04:05 9 work?

05:04:05 10 A. You learn from the mistakes of others so you don't  
05:04:09 11 have to learn from your own mistakes so much. I can  
05:04:11 12 profit from the pain of others. And then very  
05:04:13 13 importantly, when I teach students, I teach them the  
05:04:18 14 importance of you've got to get it right. Partial credit  
05:04:22 15 doesn't work because if you design something and it  
05:04:25 16 breaks, you could hurt people, you could cause huge  
05:04:27 17 losses.

05:04:28 18 And then I have roughly 200 patents of my own, and  
05:04:31 19 none of them to my knowledge have ever been challenged.  
05:04:35 20 Probably ten percent or more actually made good money for  
05:04:38 21 companies. Because if I understand what makes trouble in  
05:04:41 22 the patent world, then I can help draft a better document  
05:04:44 23 to give the lawyers.

05:04:45 24 And when the lawyers go and be creative on the  
05:04:48 25 claims, I actually read them very, very carefully, and I

05:04:53 1 teach my students how to read them so we don't end up  
05:04:57 2 with problems like what does that term mean. The less  
05:05:01 3 confusion we can sow in the world the better, is my  
05:05:05 4 belief.

05:05:05 5 Q. What role are you playing in this case today?

05:05:08 6 A. I'm just looking at infringement. Reading the  
05:05:14 7 patents and the claims that were asserted, does the  
05:05:17 8 accused device actually, in my opinion, infringe or not  
05:05:21 9 the claims. So that's all I did.

05:05:24 10 Q. So did you study the 052 and 287 Patents?

05:05:31 11 A. I did. I read them very carefully cover to cover as  
05:05:35 12 one skilled in the art.

05:05:37 13 Q. And what was your impression when you read them?

05:05:39 14 A. Well, the first thing is that both patents have the  
05:05:42 15 same figures and specification. There's different claims  
05:05:46 16 at the end, but the technical content of the two is  
05:05:50 17 identical.

05:05:50 18 Okay. So as a young person, I'm also a carpenter.  
05:05:56 19 I build things. So my first response was, hum, this is a  
05:05:57 20 carpet cleaner for the face. Sorry. I'm not disparaging  
21 anybody. It's a very important thing.

05:06:07 22 But if you ever use a rug cleaner, you've got the  
05:06:08 23 cleaning fluid and you've got the rinse water and you've  
05:06:12 24 got a vacuum. And you turn it on, and it doesn't do  
05:06:15 25 anything unless you actually put it down on the rug and

05:06:18 1 then the vacuum will pull the cleaning fluid out on the  
05:06:21 2 rug, and there's typically a brush, and then it gets  
05:06:22 3 sucked out into the collection jar. You hit the button,  
05:06:25 4 and then you'll have the rinse water because you don't  
05:06:29 5 want to leave the cleaning fluid on the rug because if  
05:06:33 6 there's a residue on the rug, it's actually the dirt --  
05:06:35 7 it attracts dirt.

05:06:38 8 So anyway, it's a much more sophisticated market,  
05:06:42 9 but from a mechanical engineering perspective, the  
05:06:48 10 elements are the same. The manifolds, the multiple  
11 fluids. It's only got two, not four, but still multiple.  
05:06:50 12 The vacuum, the switch. Yeah, so that was my first  
05:06:59 13 impression.

05:07:58 14 Q. Okay. Professor, did you also have a chance to  
05:08:01 15 study the AquaFirme XS console?

05:08:04 16 A. I did. One was sent to my home. I travel a lot. I  
05:08:09 17 work a lot with companies and stuff. So anyway, I didn't  
05:08:12 18 have an opportunity to go to the law firm. I said, if  
19 you want me to look at it, send it to my house. We get a  
20 lot of deliveries because I do a lot of equipment design.

05:08:19 21 And so it's currently now in my garage, but it was  
05:08:22 22 set up in my office when I got home.

05:08:24 23 Q. And just describe what you did with it.

05:08:26 24 A. All right. We've all seen pictures of the console.  
05:08:29 25 I looked at it. I read the manual. I turned it on. I

05:08:34 1 used it on my wrist. I gave myself a wristial, wrist  
05:08:40 2 facial. And I observed what it is. Then I turned it  
05:08:44 3 off. I started to take it apart like any good engineer  
05:08:51 4 would taking the panels off so I could see the guts. And  
05:08:53 5 I followed the lines, the fluid lines, looked and see  
05:08:57 6 what was the pump, where the electronics were. And then  
05:09:00 7 I put it all back together again and it worked again. No  
05:09:05 8 extra parts.

05:09:06 9 **MR. RADER:** Your Honor, may I approach with this  
05:09:08 10 component?

05:09:09 11 **THE COURT:** Yes.

05:09:10 12 **MR. RADER:** Thank you.

13 **BY MR. RADER:**

05:09:18 14 Q. Professor, can you please explain to the Court what  
05:09:20 15 you're holding in your hands now?

05:09:22 16 A. Okay. This is kind of the guts of the machine.  
05:09:25 17 Each one of these tubes or straws -- whatever you want to  
05:09:28 18 -- I heard it as straw term used earlier. So these  
05:09:30 19 extend down into the bottles, four bottles.

05:09:34 20 What you have here are for solenoid valves. So a  
05:09:42 21 solenoid valve is a valve where you put an electronic  
05:09:44 22 current into it, and it creates a magnetic field that  
05:09:47 23 moves a part over. They are all normally closed. So now  
05:09:52 24 with no electricity on here, if you were to provide a  
05:09:54 25 vacuum here, nothing would happen. But put current to

05:10:02 1 this valve, you could suck fluid into the container.

05:10:04 2 The way this machine is configured -- and you can  
05:10:07 3 tell by the wiring -- you can only have one of them on.  
05:10:10 4 You can never have multiple valves on. So there's never,  
05:10:12 5 ever any mixing with between the fluids.

05:10:15 6 So the fluid will flow from the valve through this  
05:10:19 7 little short section of tube up to what we're calling a  
05:10:27 8 manifold. Now, no respecting engineer would ever  
05:10:31 9 actually call that a manifold. I did it for the purposes  
10 of the case in terms of multiple inputs to something and  
05:10:38 11 outs. And the reason it really is not a manifold,  
05:10:40 12 typically is it's a solid block without individual  
05:10:45 13 connections from between the fluids or very minimal.

05:10:50 14 If you look here -- and this is an actual piece of  
05:10:53 15 production. It looks similar to the one I saw. You see  
05:10:56 16 the way the tubes are kind of bent cattywampus? That  
05:10:58 17 puts stress on these fluid connections. Okay? All  
05:11:02 18 plastic is degraded with time by oxygen and/or light and  
05:11:08 19 depending on what the fluids are.

05:11:11 20 So this may work now, but in a couple of years it  
05:11:15 21 likely will start to leak as the stress from these tubes  
05:11:23 22 being different lengths keeping it in the state of stress  
05:11:26 23 while it's here. So that's why this is not really a  
05:11:28 24 manifold. It's a collection of tube and fittings.

05:11:32 25 Now, I called it a manifold in the context of -- for

05:11:37 1 this instant in time, but it's not a very good one. It  
05:11:37 2 gets maybe a C grade at best. I'm sorry.

05:11:40 3 It works, but a proper manifold is what's actually  
05:11:44 4 in the patent. A rigid block. And there really are not  
05:11:49 5 connections between things. It's all bolted together so  
05:11:49 6 you don't have an opportunity for failure.

05:11:52 7 That's my full, candid assessment of this thing.

05:11:55 8 Q. And, Professor, what happens to the liquid, assuming  
05:12:02 9 one of the solenoid valves is open? What happens next?

05:12:07 10 A. Well, okay. The liquid goes -- this valve is open.  
05:12:10 11 The liquid comes in here, this collection system. It  
05:12:14 12 flows out of here, and it's actually pulled because --  
13 I'll put this down. Forgive me.

05:12:17 14 The head, the want, whatever you want to call it, it  
05:12:22 15 has two tubes coming to it. One tube is coming from --  
05:12:25 16 is pulling suction, or you heard the vacuum source. And  
05:12:30 17 then one tube is this from the juice. And it comes into  
05:12:35 18 the head.

05:12:35 19 Now, if it's just sitting free in air, there's no  
05:12:39 20 vacuum connection between the vacuum source and this tube  
05:12:45 21 because it has to make contact with your skin and seal  
05:12:50 22 with the skin affectively by pushing to complete the  
05:12:54 23 circuit. And I think we heard Mr. Leinsing describe  
05:12:58 24 that, and that was correct. Once you're pushing on the  
05:13:02 25 skin, there's a passageway from the suction course

05:13:07 1 across, it's called, a land or a region that surrounds  
05:13:11 2 the hole that is fed from this tube. So it starts to  
05:13:19 3 suction across that land.

05:13:21 4 And if you don't hold it real tight on the skin,  
05:13:25 5 you'll still get a flow of juice, but to get the maximum  
05:13:29 6 flow of juice, you have to hold it tight down. And it's  
05:13:32 7 that flow of liquid from the source, this tube from the  
05:13:37 8 manifold, across that thin gap of the land to the  
05:13:43 9 suction, is that flow of fluid along with moving the wand  
05:13:50 10 along your hand that creates that hydro abrasion they're  
11 talking about.

05:13:54 12 It cleans the skin very nicely. It's like a very  
05:13:56 13 high velocity fluid as it goes across the small gap. And  
05:13:59 14 then that just by viscous drag, and the nature of the  
05:14:01 15 soap or the juice flavor helps to take off the dirt and  
05:14:06 16 the dead skin. And then that goes back to the collection  
05:14:09 17 container.

05:14:10 18 Q. That was my next question. Can you just expand on  
05:14:12 19 where the fluid goes?

05:14:15 20 A. Okay. So the patent talks about different ways of  
05:14:19 21 doing this circuit. And in the accused device, one of  
05:14:28 22 the ways it does this is the suction tube goes to -- let  
05:14:32 23 me use a prop if you don't mind, please.

05:14:37 24 The waste container actually has two entrances. One  
05:14:42 25 is connected by the tube from the hand wand, and the

05:14:48 1 other one goes to a filter to a vacuum pump. So the  
05:14:57 2 fluid in the accused device only uses liquid. The patent  
05:15:04 3 talks you can use air, you can use a whole bunch of  
05:15:08 4 stuff. But the fluid from the accused device is only  
05:15:13 5 liquid.

05:15:13 6 It comes in and it just drops into the bucket. You  
05:15:18 7 can see like the soap in here. It never goes into the  
05:15:19 8 line that goes to the filter to the pump. And there's a  
05:15:23 9 reason for that. A vacuum pump creates a vacuum by  
05:15:28 10 having a spinning impeller -- or this type does -- and  
05:15:32 11 very small clearances between the spinning impeller and  
05:15:37 12 the wall. And air is very low viscosity. You know, a  
05:15:42 13 hundred times less viscus than water. And you've got to  
05:15:47 14 spin this impeller really fast.

05:15:49 15 I don't know if you've ever looked inside a vacuum  
05:15:52 16 cleaner where you see the little fan spinning. It's  
05:15:55 17 really roaring along. And if any liquid gets in there,  
05:16:01 18 it will -- it will get in the gap, and it will just stop.  
05:16:02 19 It won't work. So that's why you can't let the liquid  
05:16:08 20 ever get to the vacuum pump. And that's why they even  
05:16:11 21 have a filter there because it will mess it up.

05:16:12 22 There are pumps that are called self-priming pumps.  
05:16:15 23 They have bigger gaps. They spin a little slower that  
05:16:16 24 will actually suck and pull liquid no problem and put  
05:16:20 25 that. But they won't pump air very efficiently.

05:16:22 1 The accused device uses a proper vacuum pump to  
05:16:28 2 create suction. And the waste container -- it's a waste  
05:16:30 3 container. It's often called like a knock-out bucket.  
05:16:34 4 There's various names for it, but a knock-out bucket is a  
05:16:39 5 reasonable common name.

05:16:41 6 Q. All right. Thanks, Professor. I want to go back  
05:16:44 7 now to the issue of valves, and in particular in the  
05:16:48 8 patent. Does the patent contemplate the idea of using  
05:16:52 9 valves to control the flow of fluid?

05:16:55 10 A. Yeah, the patent actually talks about two  
05:16:59 11 embodiments. The patent specifically -- now, when I read  
05:17:00 12 the patent -- my other impression of the patent, by the  
05:17:02 13 way, is it's really focused on the manifold and the  
05:17:07 14 valving system to give a monolithic -- what I think is a  
05:17:12 15 very nice design for a very integrated system with  
05:17:17 16 minimum number of connections and, therefore, minimum  
05:17:20 17 likelihood of failure. It's really focused on that  
05:17:24 18 block.

05:17:25 19 The patent doesn't show the -- anything after the  
05:17:27 20 wand. It doesn't show how the suction is occurring or  
05:17:32 21 the waste container. It has words for it. And so when I  
22 read the patent, it tells me there's two embodiments.  
23 One embodiment is --

05:17:36 24 **MR. RAZAI:** Objection, Your Honor. An expert  
05:17:39 25 can't talk about the embodiments of the patent. They can

05:17:43 1 only talk about what the plain and ordinary meaning of a  
2 term might be in the art. But to define and interpret  
05:17:48 3 the patent is a legal issue since a patent is a legal  
05:17:49 4 instrument.

05:17:49 5 There's case law on that. I'm happy to brief it if  
05:17:54 6 we need to. But Professor Slocum can't interpret what  
05:17:58 7 the patent's embodiments mean. That's not his role.

05:17:59 8 **MR. RADER:** Your Honor, the professor is talking  
05:18:03 9 about his review of the patent specification. That's  
05:18:04 10 exactly what an expert is supposed to do.

05:18:04 11 **MR. RAZAI:** It absolutely is not, Your Honor.  
05:18:07 12 I'm happy to brief this issue, but that is not something  
05:18:10 13 that -- an expert with a mechanical engineering  
05:18:11 14 background is not here to interpret a legal instrument,  
05:18:17 15 which is a patent. That is absolute black-letter federal  
05:18:18 16 circuit law. He cannot sit and talk about the  
05:18:20 17 embodiments and how those embodiments may or may not  
05:18:23 18 enlighten what the claims mean. That's not his role.

05:18:23 19 **MR. RADER:** We're not even talking about claim  
05:18:27 20 construction. I just asked the professor to explain how  
05:18:30 21 it works.

22 **MR. RAZAI:** Why is a legal instrument --

05:18:31 23 **MR. RADER:** That's his job.

05:18:32 24 **MR. RAZAI:** That is not his job. An expert's  
05:18:36 25 job is not to interpret a patent, Your Honor. It's not

1 to sit and talk about what the embodiments of a patent  
05:18:38 2 may or may not be. He can talk about what the plain and  
05:18:40 3 ordinary meaning of a term is. He can talk about how the  
05:18:45 4 plain and ordinary meaning fits inside the claims. He  
05:18:49 5 can read the specification to figure out how that plain  
05:18:53 6 and ordinary meaning is interpreted. But to talk about  
05:18:57 7 embodiments is a legal issue, not for an expert.

05:19:05 8 **THE COURT:** Are you essentially focusing on his  
05:19:07 9 use of the word "embodiment" from a legal perspective so  
05:19:12 10 that -- your argument is he can't tell me the legal  
05:19:17 11 construction of the patent, but he can describe from his  
05:19:19 12 -- based on his expertise what this device looks like and  
05:19:23 13 what it does.

05:19:24 14 **MR. RAZAI:** He can talk about what words mean in  
05:19:27 15 his universe. He can talk about what structures mean.  
05:19:31 16 But to sit and talk about -- you're right. Just kind of  
05:19:34 17 going to your first point, yes, Your Honor, we're going  
05:19:35 18 into a universe of embodiments, and embodiments are not  
05:19:42 19 the universe for a technical expert.

05:19:42 20 **MR. RADER:** Well, Your Honor, I've been doing  
05:19:44 21 this 25 years. I've never had someone object to an  
05:19:51 22 expert talking about what's in the patent. That's what  
23 the expert always does so --

24 **MR. RAZAI:** This is the first time --

05:19:54 25 **MR. RADER:** I'm happy to read Mr. Razai's brief

05:19:56 1 when he files it, but --

05:19:56 2 **THE COURT:** I'm going to approach this issue in  
05:20:00 3 the same way that I did some of the other issues. I  
05:20:03 4 don't know the answer to that question. I'm going to let  
05:20:06 5 him go ahead testify.

05:20:09 6 **MR. RAZAI:** Absolutely, Your Honor.

05:20:10 7 **THE COURT:** And I will either accept or  
05:20:12 8 disregard his testimony on this particular issue based on  
05:20:15 9 what I expect to hear from you-all afterwards.

05:20:18 10 **MR. RAZAI:** And if Your Honor would like any  
05:20:21 11 briefing or case law on the issue, we're happy to provide  
12 it after the hearing. But this is -- like Mr. Rader  
13 said, he's litigated a lot of cases. The first time that  
14 we litigated it -- I can assure you I've filed at least  
05:20:36 15 three briefs on this very issue, and won every single one  
05:20:38 16 of them.

05:20:39 17 **THE COURT:** Okay. You may proceed.

05:20:40 18 **THE WITNESS:** Can I proceed?

05:20:42 19 **BY MR. RADER:**

05:20:42 20 Q. Yeah. If you can finish your answer, and then I'll  
05:20:42 21 ask the next question.

05:20:42 22 A. Okay. So when I look if the device is infringing or  
05:20:47 23 not -- that's the question I was asked -- I have to  
05:20:50 24 understand what the claim is, and I look to the  
05:20:53 25 specification to understand the claim. That's what I've

05:20:56 1 always done in 40 years of doing this.

05:21:00 2 There are two things that can help me understand the  
05:21:04 3 claim. One is a manifold that includes the ability to  
05:21:11 4 control fluid flow, and that's what's shown in Figures  
05:21:17 5 15, the manifold integral with it with valves. That's  
05:21:28 6 what's shown in the picture and detailed discussion.

05:21:32 7 The patent also has a paragraph that says, you know,  
05:21:32 8 you can have a manifold which just has holes in and out,  
05:21:36 9 and separate from that on the console somewhere else,  
05:21:40 10 valves. Those are the two ways I can understand  
05:21:44 11 potentially what a claim is telling me.

05:21:49 12 So the particular claim that I was asked to look at  
05:21:53 13 for infringement, specifically in my opinion, says a  
05:21:56 14 manifold that controls fluid flow. And that's one of the  
05:22:01 15 things the patent tells me it can do. There's another  
05:22:05 16 version, which is a manifold that doesn't control fluid  
05:22:08 17 flow because the valves are separate and distinct from  
05:22:15 18 the manifold.

05:22:15 19 And a manifold is a very simple thing. It's a  
05:22:19 20 structure with some number of inputs and some number of  
05:22:23 21 outputs. That's what I said in my opinion.

05:22:29 22 Q. Professor, I'm going to try to be quick because I  
05:22:33 23 know the time is late, but you mentioned the figures.

05:22:36 24 **MR. RADER:** I think for the Court's benefit, if  
05:22:38 25 we could look at the 052 Patent, Figure 15-A, please,

1 Mr. Bookbinder.

2 **BY MR. RADER:**

05:22:43 3 Q. Can you briefly explain what we're looking at here?

05:22:46 4 A. Okay. So the manifold -- see the number 24  
05:22:48 5 attaching to it, is actually comprised of four modular  
05:22:56 6 blocks. Okay? 15-B, as you look at the cross section,  
05:22:57 7 those things sticking out the front, 246, you push on one  
05:22:58 8 of those and the bottle 26 will pop off. So it's like a  
05:23:03 9 quick connect.

05:23:04 10 And then those little switches, you see 29, there's  
05:23:08 11 three of them that are down and one is up -- pardon?

12 Q. I didn't ask anything. Continue.

05:23:13 13 A. So those are the switches that control whether or  
05:23:16 14 not fluid comes out of a bottle or not. And the logic of  
05:23:21 15 this device is always only one switch can be up at a  
05:23:25 16 time.

05:23:25 17 Q. And if we can look at figure 15-C now, can you  
05:23:29 18 explain what you see in this figure?

05:23:30 19 A. So this is a cross section through that indicated on  
05:23:34 20 the earlier figure. You see the bottle. You see the  
05:23:38 21 pickup line or straw, as we've been calling it, 161. The  
05:23:43 22 mechanism 247, 249. That's all the quick disconnects, so  
05:23:50 23 that doesn't concern us.

05:23:52 24 Up top, the valve and the switch for the valve, 29,  
05:23:54 25 that is a schematic. There's no detail in there telling

05:23:58 1 me is it mechanical or electrical. And indeed, the  
05:24:04 2 specification says it could be either. What does matter  
05:24:08 3 is the fluid from the bottle when it's being drawn up  
05:24:11 4 through 161, if the switch is up like that, it will go  
05:24:14 5 through hole 171 to flow into a channel, 173, which  
05:24:20 6 actually runs between all of the blocks that form the  
05:24:24 7 manifold and off to the handpiece.

05:24:27 8 So if Switch 29 were down, that hole 171 would be  
05:24:33 9 blocked, and no fluid from that particular container  
05:24:37 10 could ever get into the line 173. 173 is what will be  
05:24:44 11 connected all the way to the handpiece.

05:24:46 12 Q. So Professor, in what we're seeing here, would the  
05:24:54 13 manifold be able to control fluid flow?

05:24:54 14 A. This one will. And this is what I was mentioning  
05:24:55 15 earlier. You see the way this valve structure is  
05:24:58 16 physically contained within this block 24. There's no  
05:25:04 17 way that -- no reasonable way it can become dislodged.  
05:25:09 18 The term is integral. And it makes a very strong, robust  
05:25:18 19 -- it will last a huge, long time. There's no way you  
05:25:21 20 can actually bump it or -- the main thing is when you  
05:25:24 21 assemble this, it's really simple to assemble because  
22 minimal parts. That's what makes it -- in my mind, I  
05:25:29 23 think ah-ha. That was the invention here they're  
05:25:31 24 actually doing. You know, if you even opened up a rug  
05:25:35 25 cleaner, it looks more like this thing.

05:25:39 1 Q. Professor, I'd like to call your attention -- if we  
05:25:44 2 could, Mr. Bookbinder -- to the top of Column 9 of the  
05:25:46 3 052 Patent. And we've highlighted Lines 4 through 8.  
05:25:49 4 Could you tell us what this is conveying?

05:25:52 5 A. This is what I mentioned earlier, that it's telling  
05:25:56 6 us that you control fluid flow either with valves -- and  
05:26:01 7 they can be mechanical or electrical -- that are part of  
05:26:05 8 the manifold, or they're separate because those valves  
05:26:10 9 are contained off in the console somewhere else. So  
05:26:13 10 there's really two ways to do this.

05:26:16 11 The particular claim when it talks about the  
05:26:18 12 manifold system controlling fluid flow, that's very -- it  
05:26:26 13 tells me right away when I look to the specification what  
05:26:30 14 they mean. It's saying right here plainly that for this  
05:26:32 15 manifold with controlling fluid flow, the valves have to  
05:26:36 16 be in the manifold system.

05:26:38 17 Q. And if the mani --

05:26:38 18 **MR. RAZAI:** Your Honor, I just want to renew my  
05:26:41 19 objection again. This is exactly what I was objecting  
05:26:44 20 to. This is a direct interpretation of the claims based  
05:26:47 21 on the specification, not based on Professor Slocum's  
05:26:50 22 understanding of manifold outside of the patent. This is  
05:26:53 23 a direct interpretation of a legal instrument, which is  
05:26:57 24 not allowed under federal circuit law.

05:27:00 25 **MR. RADER:** Actually, Your Honor, if I may? In

05:27:03 1 the *Phillips* case, which is the definitive en banc  
05:27:07 2 explanation by the federal circuit of how you do claim  
05:27:09 3 construction, it says that you must interpret the claim  
05:27:12 4 through the eyes of one of skill in the art in view of  
05:27:20 5 the specification.

05:27:21 6 So we have one of skill in the art looking at the  
05:27:21 7 specification. He's doing exactly what the federal  
05:27:23 8 circuit instructed.

05:27:25 9 **MR. RAZAI:** With all due respect to Mr. Rader,  
05:27:28 10 we can sit here and talk about lines that we remember out  
05:27:31 11 of *Phillips*, we can brief the issue if necessary, that's  
05:27:34 12 not the role of an expert, Your Honor.

05:27:37 13 **THE COURT:** It sounds like I'm going to need you  
05:27:40 14 to brief the issue since the defense intends to rely on  
05:27:48 15 Dr. Slocum, and much of what he's saying now, and what I  
05:27:53 16 hear from the plaintiff, is you think I shouldn't. But  
05:27:58 17 continue again under the same approach that I held  
05:28:00 18 before.

05:28:01 19 **BY MR. RADER:**

05:28:02 20 Q. Professor, my next question was, in the situation  
05:28:05 21 where valves are located in the console but not in the  
05:28:10 22 manifold, would the manifold be able to control the flow  
05:28:15 23 of fluid?

05:28:15 24 A. No.

05:28:16 25 Q. Can you point in the hardware that you have in front

05:28:20 1 of you, again for the Court, to the portion that for the  
05:28:24 2 -- I think you said for the sake of the case you were  
05:28:28 3 evaluating as a manifold?

05:28:29 4 A. Okay. So this being the manifold, these tubes and  
05:28:33 5 the connectors between them, the manifold does not  
05:28:36 6 include the tubes to the valves. If you try to tell me  
05:28:41 7 that, wait a second, the tube to the valve, therefore the  
05:28:44 8 valve is part of the manifold, I'd say, well, the valve  
05:28:47 9 is connected to the manifold by a tube, well, wait a  
05:28:51 10 second, the handpiece is connected to the manifold by a  
05:28:54 11 tube. So therefore, the handpiece is also a manifold.

05:28:57 12 So that tells me just by the structure when I'm  
05:29:01 13 reading the claim, a manifold is just a simple  
05:29:07 14 pass-through of fluid. Or if you're telling me the  
05:29:10 15 manifold has to control fluid flow, it has to have some  
05:29:15 16 sort of active switchable member physically in the  
05:29:21 17 manifold. Otherwise, the manifold is just something with  
05:29:26 18 a bunch of holes in it. Literally that's it.

05:29:29 19 Q. Professor, were you here for Mr. Leinsing's  
05:29:31 20 testimony about manifolds?

05:29:33 21 A. I was.

05:29:33 22 Q. Okay. And if you were to operate under  
05:29:40 23 Mr. Leinsing's view, would there be a manifold in the AMP  
05:29:49 24 device?

05:29:49 25 A. No, I don't think so for the reason I just

05:29:52 1 explained. And I would like to note, please, as an  
05:29:54 2 expert skilled in the art, but, also, I have designed it.  
05:29:59 3 In my resume it shows patents for manifolds alone.  
05:30:04 4 Manifolds that control fluid flow because they actually  
05:30:06 5 have valves as integral parts of the manifold. So this  
05:30:11 6 is not just an opinion. I've actually designed these  
05:30:16 7 things. Lots of them.

05:30:19 8 Q. Did you hear his testimony about that rotary valve  
05:30:23 9 he was talking about?

05:30:26 10 A. I did.

05:30:26 11 Q. And how does that impact your opinion --

12 **MR. ANGER:** Objection, Your Honor --

13 Q. -- about whether there's a manifold there?

05:30:32 14 **MR. ANGER:** -- this is outside the scope.

05:30:33 15 **THE COURT:** This is direct. How can it be  
05:30:34 16 outside the -- what's it outside the scope of?

05:30:46 17 **MR. ANGER:** Of his declaration.

05:30:49 18 **THE COURT:** I think I heard a bunch of  
19 objections that your expert testified beyond his  
05:30:49 20 declaration. I'll allow it.

05:30:51 21 **THE WITNESS:** With all due respect, my  
05:30:53 22 declaration includes my resume. My resumes includes my  
05:30:58 23 patents. One of my very specific patents --

05:30:58 24 **THE COURT:** Let me say, Doctor, don't -- you  
05:30:59 25 don't need to respond to the objection.

05:31:01 1                   **THE WITNESS:** Oh, no. I was just saying I have  
05:31:03 2 a valve patent that's pertinent to this, by the way.

05:31:06 3                   **THE COURT:** I understand.

05:31:07 4                   **THE WITNESS:** Oh, I'm sorry.

05:31:08 5                   **THE COURT:** But go ahead and just answer -- you  
05:31:09 6 don't need to defend yourself, I guess is what I'm  
05:31:13 7 saying. Just answer his question.

05:31:14 8                   **THE WITNESS:** I understand rotary valve in the  
05:31:17 9 context of what Mr. Leinsing was saying. I'd never  
05:31:21 10 reviewed this Palmer thing before. But one of my rotary  
05:31:27 11 valve patents is exactly what the Palmer does, by the  
05:31:29 12 way.

05:31:30 13                   **BY MR. RADER:**

05:31:30 14                   Q. And how would the discussion of Palmer impact your  
05:31:35 15 view of whether there's a manifold in that device from  
05:31:37 16 AMP?

05:31:37 17                   A. If I take that definition that was used to describe  
05:31:42 18 Palmer, then this does not have a manifold. That's all.

05:31:49 19                   Q. Okay. Is there anything in the tubes or connectors  
05:31:51 20 that you were regarding as a manifold, for purposes of  
05:31:57 21 the case, that can control the flow of fluid?

05:32:01 22                   A. No. But I do call this thing, giving them the  
05:32:08 23 benefit of the doubt, this top piece, the manifold.  
05:32:11 24 There is nothing in here that controls fluid flow. Fluid  
05:32:16 25 comes in one place, and it can come out any of the other

05:32:20 1 places. It can't come out because of these blockings, so  
05:32:25 2 it has to go out here. But only one fluid at a time can  
05:32:30 3 come in here because of these separate valves. There's  
05:32:33 4 no mixing possible in here. Never happens.

05:32:35 5 Q. So in your opinion does the AMP device practice  
05:32:40 6 Claim 1 of the 052 Patent which requires a manifold  
05:32:44 7 that's configured to control a flow of treatment  
05:32:45 8 material?

05:32:45 9 A. That's why I do not think it infringes that claim  
05:32:49 10 because the manifold here does not control fluid flow in  
05:32:53 11 any way.

05:32:55 12 Q. All right.

05:32:55 13 **MR. RADER:** Very briefly, on the 287 Patent, if  
05:32:59 14 we could bring up Claim 22, Mr. Bookbinder.

15 **BY MR. RADER:**

05:33:04 16 Q. And we've highlighted some language in Claim 22:  
05:33:09 17 Wherein the working end of the handpiece is configured to  
05:33:12 18 be placed in fluid communication with a vacuum source.

05:33:16 19 Did you evaluate this claim language?

05:33:18 20 A. I did.

05:33:19 21 Q. Okay. Now, I'd like to turn to Column 5 of the  
05:33:23 22 patent, Lines 47 through 55. Professor, what does the  
05:33:28 23 patent say fluid means?

05:33:31 24 A. It's really interesting because fluid basically,  
05:33:35 25 according to the patent, is anything that is flowing in

05:33:38 1 the system. It can be liquid. It can be air. It may or  
05:33:43 2 may not have the solids like from your skin. It's the  
05:33:47 3 treatment material. That's what it means by it says  
05:33:51 4 synonymously.

05:33:52 5 So if I just read the claim by itself, fluid, as one  
05:33:57 6 skilled in the art, I may think liquid. But here's a  
05:34:01 7 case that I need to see the -- because it's a complex  
05:34:05 8 system, what the patent owner wants fluid to mean. And  
05:34:08 9 the patent owner is telling me here it's the treatment  
05:34:14 10 material which includes water, gas, liquid, skin,  
05:34:18 11 additives, anything.

05:34:19 12 Q. And in the AMP device, what is the treatment  
05:34:22 13 material?

05:34:23 14 A. In the AMP device the treatment material is only the  
05:34:26 15 liquid from the jar -- from the jars. And then later  
05:34:31 16 when it goes across your skin, it will have skin  
05:34:34 17 particles and dirt in it. But it's always liquid based.  
05:34:42 18 There's no air.

05:34:43 19 Q. In the AMP device does the liquid ever get  
05:34:45 20 communicated to the vacuum pump?

05:34:48 21 A. No. As I said earlier, the particular way AMP makes  
05:34:53 22 its machine, it uses an actual vacuum pump that if you  
05:34:55 23 ever get liquid to it, you'll wreck it. So it's  
05:34:58 24 communicated to this bottle that has a vacuum in it, but  
05:35:03 25 it's not -- no way the liquid can get to the pump.

05:35:07 1 You'll wreck your device.

05:35:10 2 Q. In your opinion does the AquaFirme XS meet the  
05:35:14 3 requirement of Claim 22 of the 287 Patent that the  
05:35:17 4 working end of the handpiece be configured to be placed  
05:35:20 5 in fluid communication with a vacuum source?

05:35:23 6 A. It does not. There is no direct hose leading from  
05:35:27 7 the handpiece to the vacuum pump. The vacuum pump  
05:35:34 8 doesn't even know there's a handpiece there.

05:35:36 9 **MR. RADER:** No further questions, Your Honor.

05:35:40 10 **THE COURT:** Thank you. Any cross?

05:35:43 11 **MR. ANGER:** Yes, Your Honor. I'll be brief.

05:35:45 12 **CROSS-EXAMINATION**

13 **BY MR. ANGER:**

05:35:53 14 Q. Good evening, Professor Slocum.

05:35:58 15 A. Hi.

05:35:58 16 Q. Professor Slocum, in your declaration you don't  
05:36:01 17 provide any opinions related to the validity of the 052  
05:36:06 18 Patent, correct?

05:36:06 19 A. Correct. I did no validity analysis at this time.  
05:36:10 20 Just infringement.

05:36:13 21 Q. So that's true for the 287 Patent as well that you  
05:36:16 22 did not do any invalidity analysis on the 287 Patent?

05:36:22 23 A. Correct.

05:36:23 24 Q. Okay. And you were asked by your counsel about a  
05:36:28 25 rotary valve. In your opinion is a rotary valve a

05:36:36 1 manifold?

05:36:36 2 A. It may or may not have a manifold associated with  
05:36:39 3 it. The valve itself is a valve. A valve is not a  
05:36:44 4 manifold.

05:36:44 5 Q. And isn't it true you haven't evaluated the Palmer  
05:36:46 6 reference to determine whether the rotary valve in Palmer  
05:36:50 7 is a manifold?

05:36:50 8 A. I had never seen that patent before. The only thing  
05:36:54 9 I saw today was Mr. Leinsing and the images above. And I  
05:37:02 10 only have what he said that the tubes coming in, and he  
05:37:06 11 was talking about being a selector. I can't give you an  
05:37:10 12 opinion was he right or wrong because I haven't actually  
05:37:14 13 dove in in detail to the images and text of that. All I  
05:37:22 14 have is at face value what he said that he doesn't think  
05:37:27 15 that that is a manifold because you have multiple lines  
05:37:30 16 in and a valve that can select which line draws fluid.  
05:37:36 17 He said that, therefore, is not the manifold of the  
05:37:39 18 patent -- sorry, the 052 Patent.

05:37:43 19 That's what I heard. That's all I can go on is face  
05:37:47 20 value assuming that, okay, let's assume he's correct for  
05:37:50 21 now until I get to study it.

05:37:52 22 Q. But at this point you have no reason to disagree  
05:37:56 23 with Mr. Leinsing?

05:37:56 24 A. I would have to read it myself. So at this point  
05:37:59 25 I'm just saying, okay, he points to Palmer. There's six

05:38:03 1 lines coming in. He's saying there's a rotary selector  
05:38:08 2 switch, and that system is not a manifold, it's just a  
05:38:11 3 rotary switch. Whether there's a rotary switch attached  
05:38:16 4 to the manifold, I don't know. I'd have to look at the  
05:38:19 5 patent in detail. But I heard him say it's not.

05:38:22 6 Q. Professor Slocum, you evaluated this manifold here,  
05:38:26 7 this object, right?

05:38:26 8 A. The one here on the desk, yes.

05:38:28 9 Q. And what product is that from?

05:38:30 10 A. This is from the AMP product. The -- I forgot the  
05:38:34 11 part number name.

05:38:35 12 Q. Is it called the AquaFirme?

05:38:38 13 A. Yeah. AquaFirme S, I think.

05:38:40 14 Q. I believe it's XS.

05:38:43 15 A. Or XS, yeah. Sorry.

05:38:44 16 Q. Okay. And you described some issues with that  
05:38:51 17 arrangement in the product, right?

05:38:52 18 A. Well, I described a bunch of things. So the  
05:38:56 19 different tubes -- and you can see whoever cut the tubes  
05:38:59 20 and assembled it, actually the tubes are not the same  
05:39:03 21 length. That's why it's all kind of bent and twisted  
05:39:09 22 looking. That's what happens when you put things  
05:39:12 23 together that have spring compliance and they're not all  
05:39:16 24 the same length. Things will bend in order to go  
05:39:18 25 together.

05:39:18 1 Q. I think one of the items you described or one of the  
05:39:21 2 issues you described with it is that the tubing could  
05:39:24 3 potentially deteriorate over time; is that right?

05:39:27 4 A. All plastics deteriorate with time. You have oxygen  
05:39:32 5 and you have light. This doesn't have much light because  
6 it's behind the panels, but it has oxygen and unknown  
05:39:37 7 cleaning fluids inside, so it will deteriorate with time.  
05:39:40 8 They always do.

05:39:41 9 Q. So in your opinion would a solid manifold be a  
05:39:45 10 better design?

05:39:47 11 A. Yes.

05:39:48 12 Q. And why is that?

05:39:49 13 A. Pardon?

14 Q. Why is that?

05:39:50 15 A. Because a solid manifold -- which I have designed  
05:39:53 16 numerous ones -- it has no -- they're called internal  
05:39:58 17 stresses that want to relax with time. And when you have  
05:40:03 18 internal stresses and components, when those components  
05:40:08 19 start to deteriorate with time, as they relax they will  
05:40:13 20 then eventually leak if it's a fluid system or a gas  
05:40:18 21 system.

05:40:19 22 If you want to design a system to be lowest cost,  
05:40:22 23 most robust, you use a solid structure that you drill  
05:40:26 24 holes or you mold. You could have a manifold of a soft  
05:40:32 25 material, but, again, it would be monolithic or integral.

05:40:38 1 Whenever you start bolting things together or sticking  
05:40:43 2 things together, everything has mechanical tolerances in  
05:40:49 3 them, and then you induce stresses when you force them  
4 together.

05:40:51 5 When you have two springs and you compress them, the  
05:40:54 6 springs are -- they're preloaded. They maintain the  
05:40:58 7 stress in them. It's like wearing shoes that are too  
05:41:03 8 tight. Eventually when you run a marathon your toe will  
05:41:08 9 wear through the shoe.

05:41:09 10 **THE COURT:** And that's why I don't run  
05:41:13 11 marathons.

05:41:13 12 **THE WITNESS:** I've run many, Your Honor, and  
05:41:15 13 I've worn holes through many shoes.

05:41:36 14 **BY MR. ANGER:**

05:41:40 15 Q. Professor Slocum, have you heard the term "fluid  
05:41:47 16 communication"?

05:41:48 17 A. Yes, I have.

05:41:50 18 Q. What is your understanding of the term fluid  
05:41:52 19 communication?

05:41:54 20 A. Fluid will go from one point to another point.

05:41:58 21 Q. Is it a term of art?

05:42:00 22 A. I hear it used in patents and in the patent world.

05:42:04 23 As a person who designs fluid systems, I have never heard  
05:42:09 24 it used between engineers that this fluid is  
05:42:14 25 communicating to that point unless it is a logic system.

05:42:17 1 Because you can have fluidic computers. But in terms of  
05:42:22 2 transfer of power or cleaning, I can't see anywhere where  
05:42:25 3 I've seen it used other than in the patent world. It  
05:42:29 4 might be, but that's not what I would normally use. But  
05:42:29 5 I understand what it means in the patent world.

05:42:31 6 Q. And what's your understanding of it in the patent  
05:42:34 7 world?

05:42:34 8 A. Fluid goes from one point to the second point.  
05:42:39 9 Because that is a logical understanding of it over the  
05:42:42 10 many, many years I've been doing this in terms of many of  
05:42:47 11 my own patents, and what it means to communicate. This  
05:42:56 12 hears, sees, feels that.

05:42:56 13 Q. And so you would agree that encompassed within the  
05:43:01 14 term fluid communication is the concept of plumbing  
05:43:05 15 between structures?

05:43:07 16 A. I don't understand your question, plumbing between  
05:43:10 17 structures communication. If fluid goes from one point  
05:43:13 18 through plumbing continuously to actually get to the  
05:43:17 19 second point that is to be communicated, then I guess I  
05:43:22 20 understand or agree with what you're saying.

05:43:25 21 Q. And have you used the term fluid communication in  
05:43:31 22 any of your patents?

05:43:33 23 A. I think it's in there. I wouldn't have written it  
05:43:36 24 in, but the lawyers would have added that later probably.

05:43:39 25 Q. And you don't disagree with the use of the term

05:43:43 1 fluid communication in any of your patents?

05:43:44 2 A. No. As I explained earlier --

05:43:45 3 **MR. RADER:** I just want to object. If he wants  
05:43:49 4 to put a patent in front of the professor. Otherwise,  
5 it's kind of meaningless.

6 **MR. ANGER:** Let's do that. Yeah.

05:43:53 7 **THE COURT:** Is this relevant?

05:43:55 8 **MR. ANGER:** Just establishing the understanding  
05:43:58 9 of the term fluid communication.

05:43:58 10 **THE COURT:** He's testified as to what he  
05:44:01 11 understands.

05:44:02 12 **MR. ANGER:** Okay. That's fine. I can withdraw.

05:44:05 13 **BY MR. ANGER:**

05:44:07 14 Q. Just returning to the manifold concept quickly. So  
05:44:11 15 with the manifold there that you have, you described the  
05:44:17 16 structures associated with the manifold as solenoid  
05:44:21 17 valves; is that right?

05:44:22 18 A. No, I didn't. This thing's manifold is the  
05:44:29 19 connectors and the tubes between the connectors. That's  
05:44:33 20 it. The solenoid valves are separate and distinct. They  
05:44:43 21 are attached to the manifold by tubes, but they are not  
22 part of the manifold because they're attached.

05:44:44 23 If they were and you say that this valve is part of  
05:44:47 24 the manifold because it's attached with the tube, the  
05:44:51 25 same logic says the handpiece is part of the manifold

05:44:55 1 because it's attached with a tube. Because something is  
05:44:58 2 attached to something doesn't make it part of it. It's  
05:45:04 3 separate and distinct.

05:45:07 4 Q. Can a manifold have solenoid valves attached to it  
05:45:12 5 then?

05:45:12 6 A. Integral with it like the patent shows. The patent  
05:45:16 7 is very good in describing, in my opinion, a very robust  
05:45:21 8 design. That Figure 15, I think that's a very nice  
05:45:26 9 design.

05:45:26 10 Q. But does a manifold -- strike that.

05:45:30 11 Is it your testimony that a manifold can never  
05:45:36 12 include solenoid valves?

05:45:37 13 A. I didn't -- can what?

05:45:40 14 Q. Is it your testimony that a manifold can never  
05:45:43 15 include solenoid valves?

05:45:45 16 A. I didn't say that. The patent 15-B clearly shows a  
05:45:50 17 manifold that includes solenoid valves.

05:45:53 18 Q. And earlier you were evaluating with Mr. Rader the  
05:46:01 19 patent specification, correct?

05:46:03 20 A. I don't understand. I was not evaluating Mr. Rader.

05:46:07 21 Q. No. I'm sorry. In conjunction in your testimony  
05:46:13 22 with Mr. Rader, you were evaluating the patent  
05:46:18 23 specification, right?

05:46:20 24 A. No, I was not evaluating it. I was asked to read  
05:46:24 25 the claim and does it infringe. And part of what I've

05:46:31 1 been doing for 40 years is I look at a claim. You have  
05:46:35 2 to look at the claim, all the words of the claim. You  
05:46:38 3 try first just plain and ordinary meaning. Can I  
05:46:39 4 understand what it means without even looking at the  
5 specification.

05:46:44 6 My understanding is when something is, gee, I'm not  
05:46:49 7 really sure, I can look to the specification to see what  
8 might the patent owner be meaning. Like, for example,  
05:46:54 9 the treatment fluid, right? The patent owner was clearly  
05:46:56 10 defining what they meant by fluid and treatment. It's  
05:46:59 11 everything. I think I would be remiss if I didn't check,  
05:47:05 12 but I don't depend upon it.

05:47:13 13 Q. Professor Slocum, the structure that you have in  
05:47:16 14 your hand there has solenoid valves, right?

05:47:19 15 A. Solenoid valves are part of this total assembly I'm  
05:47:24 16 holding up.

05:47:25 17 Q. And that total assembly that you're holding up  
05:47:30 18 includes a manifold, right?

05:47:31 19 A. There's a manifold on the top, yes. As you can see  
05:47:36 20 it here. I've been holding this up and describing it for  
05:47:38 21 a while.

05:47:39 22 **MR. ANGER:** No further questions.

05:47:41 23 **THE COURT:** Thank you. Any redirect?

05:47:50 24 **MR. RADER:** No, Your Honor.

25 **THE COURT:** Thank you, Dr. Slocum. You may step

05:47:53 1 down.

05:47:53 2 **THE WITNESS:** Can I ask a question? Am I okay  
05:47:56 3 to head to the airport, or do you guys want me to hang  
05:48:08 4 out some more?

05:48:08 5 **THE COURT:** You're okay from my perspective.

6 **THE WITNESS:** Okay. I'll see if I can get my  
7 flight.

8 **THE COURT:** Are you just trying to get out of  
9 the heat?

10 **THE WITNESS:** I fly to China on Monday. Sorry,  
11 this time to Australia for my solar thing.

12 **THE COURT:** No worries. Travel safe.

05:48:09 13 **THE WITNESS:** Thank you. I'll try not to hurt  
14 myself.

05:48:10 15 **THE COURT:** Try not to hurt yourself in the  
05:48:11 16 meantime.

17 **MR. RADER:** Thank you, Professor.

18 **THE WITNESS:** Bye, guys.

05:48:15 19 (Witness excused.)

05:48:15 20 **THE COURT:** Defendant call its next witness.  
05:48:17 21 You didn't have another witness?

05:48:20 22 **MR. RADER:** If the plaintiff still wants to  
05:48:23 23 examine Mr. Crosby, then we would do our direct. A brief  
05:48:27 24 one.

05:48:28 25 **THE COURT:** Very brief.

1                   **MR. RADER:** Then we call Mr. Mark Crosby.

2                   **MR. RAZAI:** Mr. Rader, we can forego calling  
05:48:46 3 Mr. Crosby if you want to forego him as well.

05:48:46 4                   **MR. RADER:** Your Honor, in that case --

5                   **MR. RAZAI:** For the sake of time.

6                   **THE COURT:** Awesome.

05:48:47 7                   **MR. RADER:** We can forego.

05:48:49 8                   **THE COURT:** No offense, Mr. Crosby. I assume  
05:48:51 9 none taken.

05:48:53 10                   **MR. CROSBY:** None taken.

05:48:56 11                   **THE COURT:** All righty. That concludes proof,  
05:48:57 12 correct?

05:48:57 13                   **MR. RADER:** Yes. We have no more witnesses. We  
05:49:00 14 do have argument on the last two factors from Ms. Luster,  
05:49:05 15 if the Court would indulge.

05:49:07 16                   **THE COURT:** The Court will indulge.

05:49:21 17                   **MS. LUSTER:** Thank you, Your Honor. I'm Meaghan  
18 Luster on behalf of defendant, AMP. And I will be brief.  
19 Just about two minutes.

05:49:22 20                   So while HydraFacial's failure to demonstrate a  
05:49:26 21 likelihood of success on the merits, irreparable harm is  
05:49:28 22 dispositive. If this Court wishes to reach the final two  
05:49:33 23 preliminary injunction factors, they both disfavor a  
05:49:38 24 preliminary injunction.

05:49:39 25                   First, the balance of hardship disfavors a

05:49:45 1 preliminary injunction because HydraFacial cannot show  
05:49:49 2 any hardship given its delay in seeking a preliminary  
05:49:52 3 injunction for these patents, which are set to expire in  
05:49:53 4 just nine months. And as AMP's general counsel, Mark  
05:49:58 5 Crosby, explained in his declaration, should AMP be  
05:50:04 6 enjoined from selling its product, a product which has  
05:50:07 7 been on the market for over three years, it would suffer  
05:50:11 8 dramatically to its business and its reputation.

05:50:15 9 And further, any injunction would be prejudicial  
05:50:18 10 because, as Mark Crosby explained in his declaration as  
05:50:23 11 well, the AquaFirme XS has non-infringing usage for  
05:50:28 12 treatment such as hair support treatments. And these are  
05:50:32 13 features and functions of the AquaFirme XS that  
05:50:36 14 HydraFacial does not even allege infringe.

05:50:40 15 And second, the public interest also disfavors a  
05:50:44 16 preliminary injunction. And as an initial matter,  
05:50:46 17 HydraFacial's injunction is an attempt at patent misuse  
05:50:50 18 because HydraFacial's request for injunctive relief is,  
05:50:54 19 quote, until such time as this matter can be tried, end  
05:50:58 20 quote. And this matter will almost certainly be tried  
05:51:02 21 sometime after these patents expire in nine months.

05:51:06 22 But even putting the potential patent misuse issue  
05:51:09 23 aside, the public interest is not served by allowing  
05:51:12 24 HydraFacial to use invalid patents as a way to prevent  
05:51:17 25 legitimate competition through the injunction. And here,

05:51:21 1 the public is entitled to a competitive market for skin  
05:51:21 2 support devices. And while HydraFacial claimed in its  
05:51:25 3 opening argument that it could meet such demand, that is  
05:51:29 4 incorrect. Where, in particular here, AMP's system had  
05:51:34 5 indisputably non-infringing uses such as for those hair  
05:51:37 6 support treatments that I mentioned.

05:51:38 7 And for all those reasons, we respectfully request  
05:51:41 8 that this Court deny HydraFacial's motion for preliminary  
05:51:45 9 injunction. Thank you.

05:51:45 10 **THE COURT:** Thank you.

05:51:49 11 **MR. RAZAI:** Briefly.

05:51:51 12 **THE COURT:** Brief.

05:51:52 13 **MR. RAZAI:** Brief. A couple of things, Your  
05:51:58 14 Honor. With respect to irreparable harm, we heard from  
15 Mr. Savsani regarding customers who buy from HydraFacial,  
05:52:03 16 we have the serum, the consumables, but we also have  
05:52:07 17 products that a relationship creates where these  
05:52:10 18 customers try products and then will expand their  
05:52:13 19 offerings to have multiple products in one place. That's  
05:52:18 20 irreparable harm that can't be remedied.

05:52:24 21 Professor Slocum testified that the machine that  
05:52:25 22 Aesthetic Management Partners is selling is one that's  
05:52:26 23 going to be conducive to leaking as opposed to the solid  
05:52:31 24 manifold that we have, creating reputational harm for the  
05:52:32 25 space in general. That was part of what was discussed

05:52:35 1 today as well. So the irreparable harm factors do weigh  
05:52:39 2 in favor of an injunction.

05:52:41 3 And then with respect to Mr. Slocum's testimony  
4 regarding the manifold, what we heard was Mr. Slocum  
05:52:45 5 testified that the product does have a manifold. That is  
05:52:50 6 indisputable. That's not disputed. The manifold is  
7 there.

05:52:52 8 The issue that Mr. Slocum was talking about was the  
05:52:54 9 fact that there's valves put on there means that for some  
05:52:58 10 reason the manifold doesn't control fluid flow. The  
05:53:03 11 claim requires that the manifold is configured to control  
05:53:06 12 fluid flow.

05:53:07 13 Even if there was an argument that the claim  
05:53:11 14 construction weighs in one direction or another -- which  
05:53:15 15 that argument is not there. It's not an argument that is  
05:53:19 16 meritorious. The fact that the manifold is configured to  
05:53:21 17 control fluid flow is similar to a car that's configured  
05:53:26 18 to fly. The fact that you put wings on it doesn't stop  
05:53:29 19 it from being a car. The configuration is what's  
05:53:33 20 relevant.

05:53:34 21 But even if you look at the embodiments of a patent,  
05:53:36 22 a patent term needs to include all the embodiments  
23 described therein. So all the embodiments that would be  
05:53:40 24 described, whether the valves are on the outside, the  
05:53:42 25 inside, on the left side, that all is configured to

05:53:45 1 control fluid flow.

05:53:46 2 If you look at the manifold, the way that it's  
05:53:52 3 configured to control fluid flow is through all of the  
05:53:54 4 things that lead to it. The tubes that lead to the  
05:53:58 5 solenoid valves. The tubes that come out of it. The  
05:54:01 6 fact that you put tubes on it doesn't make it any less a  
05:54:07 7 manifold as configured to control fluid flow. That  
05:54:07 8 noninfringement argument has no merit whatsoever, Your  
9 Honor.

05:54:12 10 Those are the only points that I wanted to make.

05:54:15 11 **THE COURT:** Let me ask you a couple of questions  
12 though.

13 **MR. RAZAI:** Yes.

05:54:17 14 **THE COURT:** One of the things that was just  
05:54:18 15 raised -- one of the points just raised by Ms. Luster was  
16 if I did grant an injunction, you've asked for it through  
05:54:21 17 the end of the litigation. Her point was, well, your  
05:54:24 18 patent runs out in March.

05:54:26 19 **MR. RAZAI:** You're absolutely -- I would never  
05:54:28 20 ask for an injunction to run past the expiry of the  
05:54:33 21 patent. Any injunction would only be until March 29th of  
05:54:40 22 2026. I would never commit patent misuse nor ask the  
05:54:43 23 Court to. We would not be entitled to an injunction.

05:54:46 24 **THE COURT:** Okay. And then this is a question  
05:54:47 25 I'm going to ask you to tell me very succinctly, as

05:54:53 1 succinctly as you can, the answer.

05:54:56 2 Injunction, extraordinary relief, right? You've got  
05:55:00 3 to show likelihood of success on the merits. So as I  
05:55:04 4 understand all this, part of my consideration there and  
05:55:06 5 one of the issues raised by the defense is we've got  
05:55:11 6 substantial questions of validity.

05:55:18 7 Here we've got the argument, everything that  
05:55:20 8 happened at these IPRs. We've got -- we've got questions  
05:55:32 9 raised by the defendants relying on the IPRs but an  
05:55:41 10 analysis that can be done separate from the actual  
05:55:44 11 conclusions. So even if I don't just accept their  
05:55:47 12 conclusion of where it is now, don't I have substantial  
05:55:51 13 questions of validity?

05:55:52 14 Not that they obviously would win the case  
05:55:57 15 necessarily, but in terms of extraordinary relief.

05:56:00 16 **MR. RAZAI:** Sure. In terms of extraordinary  
05:56:02 17 relief, Your Honor -- first of all, looking at it from a  
05:56:06 18 legal standpoint, you have to do your own analysis when  
05:56:09 19 it comes to the institution. And we're just talking  
05:56:10 20 about the 287, on the 287 Patent. That's where the IPR  
05:56:18 21 has been instituted. Where you have issues where the  
22 Patent Office has said we'd like to review these issues.  
05:56:20 23 Right?

05:56:20 24 **THE COURT:** Well, that's the one. There are  
05:56:22 25 other issues related to the 052 Patent.

05:56:26 1 **MR. RAZAI:** But then the 052, the IPR doesn't  
05:56:28 2 touch on those. The fact -- let's say tomorrow Intel and  
05:56:30 3 Microsoft get into some big war. The fact that Microsoft  
4 the day before the hearing goes and files an IPR doesn't  
05:56:39 5 all of a sudden mandate anything nor create any kind of a  
05:56:41 6 presumption. The fact that an IPR exists doesn't have  
05:56:46 7 any effect on anything.

05:56:48 8 The same way where someone raises a public use  
05:56:48 9 defense --

05:56:48 10 **THE COURT:** Okay.

05:56:49 11 **MR. RAZAI:** That's my main points. So I think  
05:56:51 12 in terms of on the 287 Patent it's a trickier issue. I  
05:56:56 13 agree with you. It's a tricky issue. Looking at it, the  
05:57:00 14 fact that somebody has said I'd like to look at this  
05:57:03 15 again. It's not the same. It's not as a matter of law.  
16 The Court has to do its own analysis.

05:57:05 17 But the part that really I'd like to stress is the  
05:57:09 18 052, which there has been no institution. A patent  
05:57:11 19 that's been around since 2017, has eight years of life,  
05:57:17 20 been litigated seven times, and, more importantly, there  
05:57:21 21 is a district court that found it to be valid as a matter  
05:57:24 22 of law.

05:57:26 23 **THE COURT:** Okay. Thank you. That's helpful.

05:57:30 24 **MR. RAZAI:** Thank you.

05:57:31 25 **MR. RADER:** If I may just respond briefly. It's

05:57:35 1 in our brief, but since Mr. Razai mentioned it, the  
05:57:40 2 district court decision granting summary judgment of  
05:57:42 3 patent validity had nothing to do with any of the  
05:57:47 4 references we're talking about, Your Honor. It was a  
05:57:49 5 totally different reference. The defendants in that case  
05:57:53 6 didn't raise Karasiuk, Palmer, or any of the other  
05:57:59 7 references, the Greenberg reference from IPRs.

05:58:03 8 So the fact that he's -- first of all, a summary  
05:58:05 9 judgment ruling is not a ruling as a matter of law. Your  
05:58:08 10 Honor knows that. It's a ruling that the defendant in  
05:58:10 11 that particular case has not raised a material dispute of  
05:58:14 12 fact. And there it's just completely different prior  
05:58:19 13 art, so it's not relevant at all to the arguments we're  
05:58:22 14 making here.

05:58:23 15 **THE COURT:** Okay.

05:58:24 16 **MR. RAZAI:** One last thing, Your Honor. With  
05:58:26 17 respect to that finding, it was a finding from *Cartessa*,  
05:58:30 18 which I believe counsel acknowledged was a much bigger  
05:58:35 19 competitor. Had every single incentive in the world to  
05:58:37 20 put the best arguments possible and had all of these  
05:58:43 21 records. Especially Karasiuk, which was part of the  
05:58:46 22 record of the prosecution to be able to put forward. And  
05:58:47 23 the best arguments they put forward, the Court found  
05:58:49 24 summary judgment of no invalidity.

05:58:53 25 **THE COURT:** We'll take a look at that case.

05:59:02 1 **MS. RICCIO:** Your Honor, may I make one point?

05:59:05 2 **THE COURT:** One quick point.

05:59:07 3 **MS. RICCIO:** I wanted to point this out because  
4 this is testimony from today that's not in the brief.

05:59:08 5 But one of the things HydraFacial needs to show to

05:59:11 6 establish irreparable harm is that the harm they're

05:59:17 7 alleging is not quantifiable by monetary damages. And

05:59:26 8 Mr. Savsani testified that it would be easy to quantify

05:59:30 9 -- I believe were his words -- the damages in this case.

05:59:30 10 I think that's just about dispositive on that issue.

05:59:32 11 **THE COURT:** Okay.

12 **MR. RAZAI:** It's not --

05:59:34 13 **THE COURT:** We'll look at the transcript. Do

05:59:38 14 you-all want to file -- I'm not encouraging it. Do you

05:59:39 15 want to file something else following this hearing or

05:59:41 16 based on this hearing?

05:59:42 17 **MR. RAZAI:** If Your Honor thinks that this issue  
05:59:44 18 of what the expert is qualified to opine on would  
05:59:48 19 enlighten your decision, then we would like to file some  
05:59:52 20 brief -- maybe five pages of briefing on that in the next  
05:59:58 21 week or so.

05:59:59 22 **THE COURT:** Okay.

05:59:59 23 **MR. RADER:** I don't have any need for any

06:00:01 24 further filings, Your Honor. If you order us to, we'll  
25 do it.

06:00:03 1 **MR. RAZAI:** It is up to Your Honor.

06:00:03 2 **THE COURT:** Actually, I would like to hear on  
06:00:06 3 just that one issue because you-all seemed to disagree  
06:00:10 4 pretty vigorously, and I don't know what the answer is.  
5 So on that one limited issue. If you can do it in five  
06:00:18 6 pages, that's great.

06:00:18 7 **MR. RADER:** May we respond after we receive  
06:00:21 8 their brief?

06:00:22 9 **THE COURT:** Yes, since it was their objection.

06:00:25 10 **MR. RAZAI:** Seven days and seven days, Your  
06:00:27 11 Honor?

06:00:27 12 **THE COURT:** Seven days will be fine. Response  
06:00:29 13 in seven days.

06:00:31 14 **MR. RADER:** Thank you, Your Honor.

06:00:32 15 **THE COURT:** The other thing that we were  
06:00:34 16 supposed to do today that we are going to do very quickly  
06:00:36 17 is this is also supposed to be a scheduling conference.  
06:00:39 18 You all submitted your draft scheduling or proposed  
06:00:44 19 scheduling order that I went through. It seems to track,  
06:00:50 20 I guess, the other scheduling orders that Judge McCalla  
06:01:00 21 typically enters. It seems to me to be really  
06:01:04 22 repetitive, but I didn't really have time to dig into why  
06:01:05 23 that is, so I'm going to ignore that issue. I do have a  
06:01:10 24 couple of questions, though. Or really I guess  
06:01:12 25 statements and questions.

06:01:13 1 Motion to dismiss you-all had June 23rd, but really  
06:01:16 2 that's complete, right? The motion to dismiss has been  
06:01:20 3 filed, I think there's a response, and I think you-all  
06:01:23 4 have time for a reply still.

06:01:25 5 **MR. RADER:** That's right, Your Honor.

06:01:27 6 **THE COURT:** Okay. The issue of a stay, I'm  
06:01:34 7 going to leave it in just to note that AMP thinks it  
06:01:38 8 might move for a stay. I hate stays, but we'll see what  
06:01:42 9 happens.

06:01:50 10 I think it's the only other issue, is this issue at  
06:01:57 11 the top of Page 9 of whether I'm going to tell you you  
06:02:02 12 have to call or set up a telephone conference before  
06:02:20 13 Daubert motions or motions to compel. It's not my  
06:02:23 14 practice. And in reading the footnote, I would prefer to  
06:02:26 15 say you may first call but not to require you to call.

06:02:30 16 My hope is you-all would try to talk to each other  
06:02:34 17 and work things out and be reasonable. And if there's an  
06:02:36 18 issue I need to deal with, I'll just deal with it. If  
06:02:39 19 there's something -- after you file whatever you're going  
06:02:41 20 to file, if there's something that I think would come  
06:02:45 21 from having a conference, I'll have a conference. So I'm  
06:02:50 22 going to use the May 1st call language. And actually,  
06:02:53 23 I'm going to say May 1st move for a not telephonic but a  
06:03:02 24 Teams conference. I hate telephonic conferences.

06:03:06 25 One other question about what you-all meant. On

06:03:13 1 Page 10 it says: The parties are ordered to engage in  
06:03:18 2 ADR before the close of discovery. Is that before the  
06:03:22 3 close of fact discovery? What do you-all mean by that  
06:03:32 4 when you say it?

06:03:34 5 **MR. RAZAI:** Whenever I use the word discovery  
06:03:38 6 without modification, I usually mean fact discovery.

06:03:42 7 **THE COURT:** Is that -- I'd like to add fact  
06:03:46 8 discovery.

06:03:48 9 **MR. RADER:** No objection, Your Honor.

06:03:54 10 **THE COURT:** That's all the questions I had. The  
06:03:57 11 schedule overall looks fine to me.

06:03:57 12 **MR. RAZAI:** I have one question, Your Honor.  
06:04:00 13 With respect to the schedule and all the local rule  
06:04:03 14 filings, it seems like it's -- there's a lot that's  
06:04:06 15 contingent on things, and this case could drag for a  
06:04:11 16 while. Is it possible for the parties to get a trial  
06:04:15 17 date to try to work backwards for some of these things?  
06:04:16 18 Because it could end up stalling for years and years, and  
06:04:19 19 I would be loathed to have that happen.

06:04:22 20 **THE COURT:** I would too. I usually set a trial  
06:04:29 21 at scheduling conferences. I don't know how to do that  
06:04:34 22 here.

06:04:34 23 **MR. RAZAI:** Maybe just even setting a scheduling  
06:04:38 24 conference date so the parties can at least try to move  
06:04:41 25 backwards? The thing is that with respect to these

06:04:44 1 parties, Your Honor, there's already been at least four  
06:04:47 2 to six depositions that AMP has already taken, tens of  
06:04:53 3 thousands of documents that have already been produced  
06:04:55 4 that all of them relate to the same products and the same  
06:04:55 5 family of patents. There's just not that much to do to  
06:04:58 6 require three more years of litigation.

06:05:01 7 And we're just bound by the local patent rules here  
06:05:05 8 to go through some of these dates. And we are trying to  
06:05:08 9 go through them, but based on my calculations, it could  
06:05:12 10 be two and a half years or more depending on when claim  
06:05:16 11 construction comes out from the April date in this case  
06:05:21 12 from where the stay was lifted.

06:05:23 13 It's just a very, very lengthy, unnecessarily  
06:05:26 14 lengthy, schedule. Especially for a case where there's  
06:05:29 15 been so much activity already.

06:05:32 16 **THE COURT:** We could --

06:05:33 17 **MR. RADER:** Your Honor, I have a different  
06:05:35 18 perspective on that, not surprisingly. First of all,  
06:05:38 19 while it's true that I deposed four third-party fact  
06:05:43 20 witnesses about the public use and one former employee of  
06:05:46 21 theirs, that was it. I haven't yet taken depositions of  
06:05:51 22 the inventors. We haven't deposed any of their current  
06:05:53 23 employees. There's a tremendous amount of discovery that  
06:05:57 24 still needs to be done. And any delay in the schedule  
06:06:03 25 is, not to harp on this, but a self-inflicted wound,

1 right?

06:06:06 2 This case could have been on a very different  
06:06:08 3 schedule had HydraFacial not elected to pursue a case at  
06:06:14 4 the ITC first in which they knew they couldn't get any  
06:06:19 5 relief. So we don't feel that we should be rushed.

06:06:22 6 **THE COURT:** The issue you're -- you're talking  
06:06:26 7 about what you all may do. Really the schedule is  
06:06:30 8 dependent on me saying what I would do. So you've got a  
06:06:34 9 certain amount of time from the -- my claims construction  
06:06:41 10 ruling for discovery. What the plaintiff is really  
06:06:48 11 asking me to do is predict when I'll rule, which I do not  
06:06:52 12 like to do.

06:06:53 13 **MR. RAZAI:** Of course, Your Honor.

06:06:54 14 **THE COURT:** What I am willing to do is set a  
06:06:58 15 date for the claim construction hearing because I can  
06:07:04 16 tell the timeframe I need to set that in based on this  
06:07:08 17 schedule. And I think it would be easier to set it with  
06:07:12 18 you all here and your schedules here. Right?

06:07:17 19 **MR. RAZAI:** Yes, Your Honor.

06:07:17 20 **THE COURT:** So I'm willing to set that date. It  
06:07:21 21 says within 30 days of the response of claim construction  
06:07:25 22 briefs, which are due February 4th.

06:07:51 23 **MR. RAZAI:** From our perspective, Your Honor, we  
06:07:54 24 can make anything work.

06:07:55 25 **THE COURT:** I appreciate that. I think I will

06:07:57 1 not set it on Friday at 2:00 again.

06:08:07 2 Your prehearing statement is due on the 11th. What  
06:08:24 3 about Friday, February 27th at 9:30?

06:08:29 4 **MR. RAZAI:** Works for me, Your Honor.

5 (Phone rings.)

06:09:24 6 **THE COURT:** Is that your son calling?

06:09:24 7 **MR. RADER:** No. Sorry. I had my phone off the  
06:09:26 8 whole time. I just turned it on to see my calendar, so I  
9 apologize for that.

10 I don't have a conflict. Ms. Riccio is checking her  
06:09:31 11 schedule.

06:09:31 12 **MS. RICCIO:** I'm sorry, Your Honor. I'm  
06:09:33 13 checking one thing because I may have a case going to  
06:09:36 14 trial that week so I'm just making sure.

06:09:39 15 **THE COURT:** I do too.

06:10:06 16 **MS. RICCIO:** I don't have a conflict. Thank  
06:10:08 17 you.

06:10:08 18 **THE COURT:** So February 12th, at 9:30 we'll set  
06:10:17 19 the claim hearing. I'm not willing to go any further  
06:10:20 20 than that. I will tell you that at that time we can look  
06:10:24 21 at the schedule and see if we can -- based on what's  
06:10:27 22 going on at that time and how long I think it would take  
06:10:30 23 me to do the ruling, I don't mind setting the rest of the  
06:10:33 24 schedule.

06:10:33 25 The other thing I'll say is I do not like cases to

06:10:37 1 sit. I can't say that it doesn't at times because it  
06:10:47 2 does. But I'm going to move cases along.

06:10:47 3 **MR. RAZAI:** When it comes to some of these local  
06:10:50 4 patent rules, it seems like there's almost a year between  
06:10:55 5 the claim construction order and dispositive motions. So  
06:10:59 6 a very long schedule. And I don't understand it, but  
06:11:03 7 they are the rules, so.

06:11:09 8 **THE COURT:** Well, the only thing I will say that  
06:11:11 9 I stick to is the 120 days from filing of dispositive  
06:11:15 10 motions to trial to give me time to rule on it while you  
06:11:20 11 all are preparing for trial. The rest of this, I don't  
06:11:23 12 know. This is my first experience with this. But we'll  
06:11:28 13 keep the case moving as quickly as we can.

06:11:32 14 **MR. RAZAI:** Thank you, Your Honor.

06:11:32 15 **THE COURT:** Anything else from the plaintiff?

06:11:34 16 **MR. RAZAI:** Not from us, Your Honor.

06:11:35 17 **THE COURT:** Anything else from the defendant?

06:11:40 18 **MR. RADER:** If I could just go back. I know  
06:11:42 19 Your Honor -- I wanted to take the opportunity, if you'll  
06:11:45 20 indulge me, to comment on the stay issue. I know Your  
06:11:49 21 Honor said in general you're not a fan of stays. I know  
06:11:53 22 this is your first patent case, so motions for stay are  
06:11:59 23 very common in patent cases where there are IPRs  
06:12:03 24 involved. And the reason is very simple.

06:12:03 25 There's a 75 percent chance that the claims will be

1 invalidated in the IPR. And so there's a tremendous  
2 amount of work, not only for the Court, but work and  
3 expense for the parties that may be completely without  
4 reason if the PTAB ends up invalidating the patent, and  
5 then in the meantime we've done all of this work and  
6 spent a tremendous amount of money.

7 So that's why defendants frequently bring those  
8 motions. And it varies from judge to judge and  
9 jurisdiction to jurisdiction. But in many jurisdictions  
10 where we practice, it's quite common, for example in  
11 Delaware, for the Court to stay if there are IPRs pending  
12 against either all or in many cases some of the patents.

13 For example, here there are three patents on the  
14 console. There are two patents on the tips, and those  
15 only cover the tips. And the tips are pennies. So in  
16 terms of the overall context of the case, they're  
17 inconsequential financially. And there's a high  
18 likelihood that what the Court looks at is  
19 simplification. So IPRs will simplify the case even if  
20 they don't cover all the patents.

21 But this is sort of a unique situation where the  
22 patents on which we've not filed IPRs are on a tiny piece  
23 of the product that's not worth much.

24 So I just wanted to preview some of the things you  
25 might hear from us in August.

06:13:32 1                   **THE COURT:** And I'm not interested in trying to  
06:13:35 2                   make either side spend money that they shouldn't have to  
06:13:39 3                   spend. So I guess what I would want to know in a stay --  
06:13:44 4                   in a motion for a stay is what does the process look like  
06:13:52 5                   that I'm staying the case for? What's the length of  
06:13:56 6                   time? You know, what's the likelihood you can predict  
06:13:59 7                   what's going on.

06:14:00 8                   What I really hate is when I'm having to stay  
06:14:03 9                   something that's just hanging out there and I have no  
06:14:07 10                  idea when it's going to end, and so it just sits on the  
06:14:10 11                  docket. So if I could hear a little bit of things  
06:14:14 12                  related to that if you end up moving. That would be  
06:14:17 13                  helpful.

06:14:19 14                  **MR. RADER:** That's helpful, Your Honor. Thank  
06:14:20 15                  you.

06:14:20 16                  **MR. RAZAI:** And Your Honor, with respect to the  
06:14:21 17                  request for the stay, there's only one patent that has an  
06:14:24 18                  institution, and that's the 287. AMP did not file IPRs  
06:14:32 19                  of their own until very recently. And I believe that the  
20                  institution decisions on those aren't even expected until  
06:14:36 21                  January, which is six months from now, as to whether the  
06:14:38 22                  PTO will even pick them up or not.

06:14:43 23                  There are other parties that have filed, but we  
06:14:47 24                  don't know whether those parties will be around, whether  
06:14:51 25                  those petitions will be around. And normally courts

06:14:55 1 don't even consider stays until the institution decision.

06:14:56 2 But in this case it's very different because all the  
06:15:00 3 issues won't be resolved with the IPRs that are in play.  
06:15:07 4 AMP is now -- I believe we are past the deadline of them  
06:15:07 5 being able to file IPRs. And they can't IPR the other  
06:15:08 6 two patents. So 40 percent of the patents in play will  
06:15:15 7 never be before the IPR. So we can take that up at the  
06:15:16 8 right time.

06:15:16 9 **THE COURT:** Yeah. And that's something I would  
06:15:18 10 want to hear both of your positions on if we get to that.

06:15:22 11 **MR. RAZAI:** I really want to thank the Court and  
06:15:26 12 everybody here for the excessive amount of time that you  
06:15:29 13 guys have spent on this. I really appreciate it. It was  
06:15:33 14 a lot of time and we're very grateful.

06:15:35 15 **THE COURT:** You're welcome, I guess. Thank you  
06:15:38 16 all for being patient with me and understanding that I  
06:15:43 17 haven't gone down this road before. But thank you. Have  
06:15:47 18 a good trip home, good weekend. And we are in recess.

06:15:54 19 **MR. VORDER-BRUEGGE:** I don't know the answer to  
06:15:56 20 this because I didn't file this document, but I want to  
06:15:59 21 make sure somebody sent this to you in Word so you're not  
06:16:02 22 having to --

06:16:02 23 **THE COURT:** If we don't have it in Word, we'll  
06:16:05 24 reach out. I don't know whether we do or not because I  
06:16:09 25 have the ECF copy. We may not. Whoever sent it, do send

06:16:12 1 it to the ECF mailbox. Thank you, Mr. Vorder-Bruegge.  
06:16:15 2 Appreciate it.

06:16:17 3 **THE CASE MANAGER:** Court stands adjourned.

06:16:22 4 (Court adjourned at 6:16 p.m.)

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C E R T I F I C A T E

I, POLLY W. WARDLAW, do hereby certify that the foregoing 180 pages are, to the best of my knowledge, skill and abilities, a true and accurate transcript from my stenotype notes of the PRELIMINARY INJUNCTION HEARING on the 25th day of July 2025, in the matter of:

HYDRAFACIAL, LLC

vs.

AESTHETIC MANAGEMENT PARTNERS, LLC, et al.

Dated this 1st day of August 2025.

*S/ Polly W Wardlaw*

POLLY W. WARDLAW, CCR, LCR  
Official Court Reporter  
United States District Court  
Western District of Tennessee