UNITED STATES INTERNATIONAL TRADE COMMISSION

Washington, D.C.

In the Matter of	
CERTAIN HYDRODERMABRASION SYSTEMS AND COMPONENTS THEREOF	**Inv. No. 337-TA-1408**

ORDER NO. 29: CONSTRUING CERTAIN TERMS OF THE ASSERTED CLAIMS (*MARKMAN* CLAIM CONSTRUCTION)

(March 14, 2025)

I. BACKGROUND

On July 17, 2024, the Commission instituted this Investigation pursuant to subsection (b) of Section 337 of the Tariff Act of 1930, as amended, to determine:

> whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain products identified in paragraph (2) by reason of infringement of one or more of claims 1–12, 14–20, 22–26, 28–37, and 39–45 of the '287 patent, and whether an industry in the United States exists as required by subsection (a)(2) of section 337;

89 Fed. Reg. 58188 (July 17, 2024).

The Notice of Investigation ("NOI") names as complainant: HydraFacial LLC f/k/a Edge Systems LLC of Long Beach, California ("Complainant"). *Id.* The NOI names as respondents: Cartessa Aesthetics, LLC of Melville, New York and Eunsung Global Corp. of Republic of Korea (collectively, "Respondents"; with Complainant, "Parties"). *Id.* Commission Investigative Staff is not a party in this Investigation. *Id*.

Pursuant to Order No. 5 ("Adopted Procedural Schedule"), the Parties filed a Joint Claim Construction Chart. (Doc. ID No. 836839 (Nov. 8, 2024).). Additionally, each of the Parties filed a *Markman* Brief. (Doc. ID No. 839270 (Dec. 13, 2024) (CMBr.); Doc. ID No. 839293

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(Dec. 16, 2025) (RMBr.)).

Pursuant to Order No. 15, a *Markman* hearing was held on January 14, 2025 ("*Markman* Hearing"). (Order No. 15 (Dec. 20, 2024); *see also* Doc. ID No. 843778 (Feb. 18, 2025) (MHr'g Tr.).).

On July 31, 2024, the Parties filed a Post-Hearing Joint Claim Construction Chart ("PH JCCC"). (Doc. ID No. 841458 (Jan. 21, 2025).). The PH JCCC contains nine (9) disputed claim terms upon which the proposed constructions referenced in this Order are based. (*Id.*).

II. APPLICABLE LAW

A. Claim Construction Generally

Claim construction begins with the language of the claims themselves. Claims should be given their ordinary and customary meaning as understood by a person of ordinary skill in the art, viewing the claim terms in the context of the entire patent. *Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005). In some cases, the plain and ordinary meaning of claim language is readily apparent and claim construction will involve little more than "the application of the widely accepted meaning of commonly understood words." *Id.* at 1314. In other cases, claim terms have a specialized meaning and it is necessary to determine what a person of ordinary skill in the art would have understood disputed claim language to mean by analyzing "the words of the claims themselves, the remainder of the specification, the prosecution history, and extrinsic evidence concerning relevant scientific principles, as well as the meaning of technical terms, and the state of the art." *Id*. (quoting *Innova/Pure Water, Inc. v. Safari Water Filtration Sys., Inc.*, 381 F.3d 1111, 1116 (Fed. Cir. 2004)).

The claims themselves provide substantial guidance with regard to the meaning of disputed claim language. *Phillips*, 415 F.3d at 1314. "[T]he context in which a term is used in the asserted claim can be highly instructive." *Id.* Similarly, other claims of the patent at issue,

regardless of whether they have been asserted against respondents, may show the scope and meaning of disputed claim language. *Id.*

In cases in which the meaning of a disputed claim term in the context of the patent's claims is uncertain, the specification is the "single best guide to the meaning of a disputed term." *Id.* at 1321. Moreover, "[t]he construction that stays true to the claim language and most naturally aligns with the patent's description of the invention will be, in the end, the correct construction." *Id*. at 1316. As a general rule, however, the particular examples or embodiments discussed in the specification are not to be read into the claims as limitations. *Id.* at 1323.

The prosecution history may also explain the meaning of claim language, although "it often lacks the clarity of the specification and thus is less useful for claim construction purposes." *Id.* at 1317. The prosecution history consists of the complete record of the patent examination proceedings before the U.S. Patent and Trademark Office ("PTO"), including cited prior art. *Id.* The prosecution history may reveal "how the inventor understood the invention and whether the inventor limited the invention in the course of prosecution, making the claim scope narrower than it would otherwise be." *Id.*

If the intrinsic evidence is insufficient to establish the clear meaning of a claim, a court may resort to an examination of the extrinsic evidence. *Zodiac Pool Care, Inc. v. Hoffinger Indus., Inc.*, 206 F.3d 1408, 1414 (Fed. Cir. 2000). Extrinsic evidence may shed light on the relevant art, and "consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises." *Phillips*, 415 F.3d at 1317. In evaluating expert testimony, a court should disregard any expert testimony that is conclusory or "clearly at odds with the claim construction mandated by the claims themselves, the written description, and the prosecution history, in other words, with the written record of the

patent." (*Id*. at 1318.). Moreover, expert testimony is only of assistance if, with respect to the disputed claim language, it identifies what the accepted meaning in the field would be to one skilled in the art. *Symantec Corp. v. Comput. Assocs. Int'l, Inc.*, 522 F.3d 1279, 1289 n.3., 1290-91 (Fed. Cir. 2008). Testimony that recites how each expert would construe the term should be accorded little or no weight. *Id*. Extrinsic evidence is inherently "less reliable" than intrinsic evidence, and "is unlikely to result in a reliable interpretation of patent claim scope unless considered in the context of the intrinsic evidence." *Phillips*, 415 F.3d at 1318-19.

Extrinsic evidence is a last resort: "[i]n those cases where the public record unambiguously describes the scope of the patented invention, reliance on any extrinsic evidence is improper." *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1583 (Fed. Cir. 1996).

B. Indefiniteness

Indefiniteness must be proven by clear and convincing evidence. *See Cox Commc'ns, Inc. v. Sprint Commc'ns Co. LP*, 838 F.3d 1224, 1228 (Fed. Cir. 2016). A patent claim is not indefinite if it "inform[s], with reasonable certainty, those skilled in the art about the scope of the invention." *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 901 (2014). The indefiniteness "inquiry trains on the understanding of a skilled artisan at the time of the patent application" and must be conducted in light of the intrinsic evidence. *Id.* at 911, 901.

III. THE ASSERTED PATENTS AND CLAIMS AT ISSUE

A. The '287 Patent

The '287 patent, entitled "Devices and Methods for Treating Skin," issued on January 9, 2024, from U.S. Application No. 18/084,884, filed on January 9, 2023. (JMX-0001 ('287 patent) at 1–2.). The '287 patent results from a lengthy family of continuation application, ultimately claiming priority to provisional application number 60/755,310, filed on December 30, 2005. *Id*. Complainant asserts the claims are entitled to claim priority to this provisional application. (*See*

Doc. ID No. 829332, Complainant's Notice of Patent Priority Dates (August 12, 2024).). Respondents do not dispute the priority date. (*See* RMBr. at 5.).

The '287 patent names Roger Ignon, Scott Mallett, Abraham Solano, and William Cohen as the inventors. (JMX-0001 at 1.).

The '287 patent is directed to "the field of skin treatment, and more specifically apparatuses and methods for treating a person's skin." (JMX-0001 at 1:30–31.). The specification describes one embodiment that has

> a console with a user input device and a handpiece assembly. The handpiece assembly is configured to treat skin. A fluid line provides fluid communication between the console and the handpiece assembly. A manifold system is coupled to the console and controlled by the user input device, such as a computer, touchscreen, keyboard, and the like. The manifold system is configured to hold releasably a plurality of fluid sources and deliver fluid from at least one of the plurality of fluid sources to the handpiece assembly.

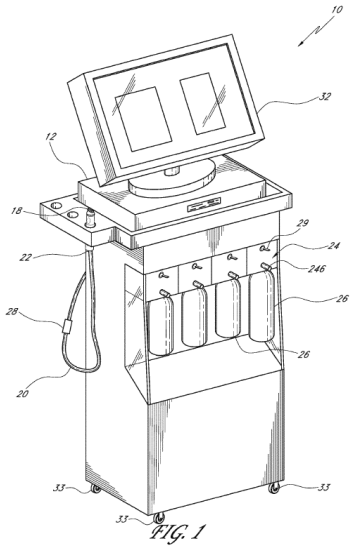


FIG. 1

(*Id*. at 2:19–28, Fig. 1.).

IV. PERSON OF ORDINARY SKILL IN THE ART

A. Legal Standard

A hypothetical person is a person of ordinary skill and "ordinary creativity." *KSB Int'l Co. v. Teleflex, Inc*., 550 U.S. 398, 420 (2007). "Factors that may be considered in determining [the] level of ordinary skill in the art include: (1) the educational level of the inventor[s]; (2) type of problems encountered in the art; (3) prior art solutions to the problems; (4) rapidity with which inventions are made; (5) sophistication of the technology; and (6) educational level of active workers in the field." *Envtl. Designs Ltd. v. Union Oil Co. of California*, 713 F.2d 693,

696-97 (Fed. Cir. 1983) (citations omitted). "These factors are not exhaustive but merely a guide to determining the level of ordinary skill in the art." *Daiichi Sankyo Co. v. Apotex, Inc.*, 501 F.3d 1254, 1256 (Fed. Cir. 2007).). The hypothetical person of skill is also separately presumed to have knowledge of all the relevant prior art in the field. *Custom Accessories, Inc. v. Jeffrey-Allan Indus., Inc.*, 807 F.2d 693, 697 (Fed. Cir. 1983).

B. The Adopted Definition

Complainant contends one of ordinary skill in the art

> would have had a degree in science or engineering plus a minimum of three years of experience in the medical device industry. Alternatively, a product designer could have an additional two years of experience in the industry in lieu of a formal science or engineering degree. The person of ordinary skill would also consult with a physician as needed to understand the medical implications of the disclosed device, including the effect of the device on the skin.

(CMBr. at 9 (citations omitted)).

Respondents assert that one of ordinary skill in the art

> would have a moderate to high level of education and/or experience, with additional education substituting for experience and vice versa. The POSITA in skin treatment apparatus design would ordinarily have a bachelor's degree in a technical discipline, including education in one or more fields relating to engineering, physics, computer sciences, or medicine, and two years of experience in industry working in the field of skin treatment.

(RMBr. at 8 (citations omitted)).

The Parties' proposed definitions of a person of ordinary skill in the art do not appear to differ in a way that is material to the claim construction analysis. Furthermore, neither party argued in the briefing or at the Markman hearing that adopting one definition over the other would affect the claim construction. Therefore, both definitions are appropriate to define a person of ordinary skill in the art for the '382 patent and will not materially change the claim constructions below.

V. CONSTRUCTION OF DISPUTED CLAIM TERMS OF THE '287 PATENT

The following table summarizes the disputed claim terms of the '287 patent and the parties' proposed constructions. The final column of the table contains the adopted construction of each term based on the Parties' briefs, the arguments presented at the Markman hearing, and the record evidence. A later order will issue with the full explanation of each adopted construction.

Claim Term	**Complainant's Proposed Construction**	**Respondents' Proposed Construction**	**Adopted Construction**
Block '287 Patent Claims 1, 26, 37	Plain and ordinary meaning If construed: "an object with substantially flat sides" If means-plus-function: Function: "selectively receive fluid" and "selectively be in fluid communication with the handpiece" Structure: "manifold system 24" ('287 Patent at 17:17–18:37; Figures 15A–15D), or "lumen 171" (18:15–18), or "valves, fluid lines, and the like" (18:38–42), and equivalents of these structures.	This term is indefinite and lacks written support. Alternatively, the term is subject to 35 U.S.C. § 112, ¶6. The function is - selectively receive fluid from the first container when the first container is connected to the console; - selectively receive fluid from the at least one additional container when the at least one additional container is connected to the console; and - selectively be in fluid communication with the handpiece through a first conduit when the handpiece is connected to the console. The corresponding structure is a manifold or its equivalent.	Indefinite

Claim Term	Complainant's Proposed Construction	Respondents' Proposed Construction	Adopted Construction
fluid control member '287 Patent Claim 11	Subject to 35 U.S.C. § 112, ¶6. Function: "be in fluid communication with at least a first container and a second container" and "be in fluid communication with the handpiece assembly" Structure: "manifold system 24" ('287 Patent at 17:17–18:37; Figures 15A–15D), or "lumen 171" (18:15–18), or "valves, fluid lines, and the like" (18:38–42), and equivalents of these structures.	This term is indefinite and lacks written description. Alternatively, this term is subject to 35 U.S.C. § 112, ¶6. Its function is - be in fluid communication with at least a first container and a second container when the first container and the second container are connected to the fluid control member; and - be in fluid communication with the handpiece assembly. Its corresponding structure is a manifold or its equivalent.	To be determined
collection lumen '287 Patent Claim 22	Plain and ordinary meaning If construed: "an interior space or pathway that receives fluid"	This term is indefinite and lacks written support. Alternatively, the term is subject to 35 U.S.C. § 112, ¶6. The function is to be in fluid communication with the first container and the at least one additional container when the first container and the at least one additional container are connected to the console. The corresponding structure is a manifold or its equivalent.	Plain and ordinary meaning, i.e., an interior space or pathway that receives fluid

Claim Term	Complainant's Proposed Construction	Respondents' Proposed Construction	Adopted Construction
Handpiece '287 Patent Claims 1, 22, 37, 26	Plain and ordinary meaning If construed: "part that is designed to be held by hand"	A handpiece is a unitary device for treatment, including a handle and tip.	Plain and ordinary meaning, i.e., the part that is designed to be held by hand
handpiece assembly '287 Patent Claims 11	Plain and ordinary meaning If construed: "part that is designed to be held by hand"	A handpiece assembly is multiple pieces that can be interconnected to make the handheld portion of the apparatus.	Plain and ordinary meaning, i.e., the part that is designed to be held by hand
selectively receive '287 Patent Claims 1, 26, 37	Plain and ordinary meaning If construed: **"**receive in response to a selection**"**	Receiving fluid or not based on the selection of a valve position.	Plain and ordinary meaning, i.e., receive in response to a selection
selectively be in fluid communication '287 Patent Claims 1, 26	Plain and ordinary meaning If construed: "be in fluid communication in response to a selection"	Being in fluid communication or not based on the selection of a valve position.	Plain and ordinary meaning, i.e., be in fluid communication in response to a selection
sequentially '287 Patent Claim 22	Plain and ordinary meaning If construed: "one after the other"	Following a fixed order.	Plain and ordinary meaning, i.e., one after the other or not simultaneously
deliver to the handpiece one at a time '287 Patent Claim 26	Plain and ordinary meaning If construed: "deliver a single fluid to the handpiece at a given time"	Deliver without intermixing**.**	Plain and ordinary meaning, i.e. deliver a single fluid to the handpiece at a given time

VI. TERMS CONSTRUED IN THIS ORDER

Claim terms are construed in this Order solely for the purposes of this Section 337

Investigation. Only claim terms in controversy need to be construed, and then only to the extent necessary to resolve the controversy. *Vanderlande Indus. Nederland BV v. Int'l Trade Comm.*, 366 F.3d 1311, 1323 (Fed. Cir. 2004); *Vivid Tech., Inc. v. Am. Sci. & Eng'g, Inc.*, 200 F.3d 795, 803 (Fed. Cir. 1999).

The Parties will be limited to the constructions adopted in this Order. Ground Rule 1.14 states that "[t]he parties will be bound by their claim construction positions set forth on the date they are required to submit a joint list showing each party's final proposed construction of the disputed claim terms and will not be permitted to alter these absent a timely showing of good cause." Modified or new constructions set forth for the first time in post-hearing briefs have been considered waived unless a party agrees with the other on a construction, thereby conceding its position.

Similarly, it will not be appropriate for any party to state that a claim term that may be implicated in an expert report or expert testimony has either a "plain or ordinary" meaning. (*See* G.R. 1.14.). If any party posits a "plain and ordinary meaning," it must be explained with a detailed rationale. (Order No. 18 at 2.). More to the point, there should not be any new, let alone previously disclosed claim terms that have an alleged "plain and ordinary" meaning without clear explanations. *Ipse dixit* arguments are not sufficient.

VII. CONCLUSION

Constructions of the disputed claim terms are hereby adopted by this Order.

SO ORDERED.

MaryJoan McNamara
Administrative Law Judge