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

HYDRAFACIAL LLC, Plaintiff, v. AESTHETIC MANAGEMENT PARTNERS, LLC and AESTHETIC MANAGEMENT PARTNERS INC., Defendants.	Civil Action No. 2:24-cv-02480-SHL-tmp

DEFENDANTS' OPENING CLAIM CONSTRUCTION BRIEF

AMP Exhibit 1038
AMP v. HydraFacial
IPR2025-01169

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4	HF-AMP_CC_0000011, *Certain Hydrodermabrasions Sys. & Components Thereof*, Inv. No. 337-TA-1408, Order No. 32, Construing Remaining Disputed Claim Term (Mar. 19, 2025)
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11	Excerpt of AMP_00020726, 18/638,470 File History
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I. INTRODUCTION

The public is entitled to rely on the patentee's explanation of its own invention. HydraFacial ("HF"), however, tries to sidestep that public-notice function by spurning explicit definitions in its own patent specifications, as well as constructions it has repeatedly accepted in Patent Office proceedings when prosecuting its patents. HF also proffers numerous "plain and ordinary meaning" constructions, likely in an effort to give its expert leeway to re-interpret the claims for purposes of arguing infringement at trial. The goal of claim construction, however, is to provide definitions from the Court to assist the jury. As explained below, the Court should adopt the claim constructions proposed by Aesthetic Management Partners ("AMP"), giving the disputed claim terms the meaning the inventors themselves provided, and finding the term "spiral-like" indefinite because it is a term of degree that fails to provide reasonable certainty regarding the metes and bounds of what is sufficiently "like" a spiral to infringe.

II. BACKGROUND

On July 8, 2024, HF filed a complaint in this Court alleging that AMP's product infringes U.S. Patent Nos. 9,550,052 ("the '052 Patent"), 11,446,477 ("the '477 Patent"), 11,865,287 ("the '287 Patent"), 10,357,641 ("the '641 Patent"), and 10,357,642 ("the '642 Patent"). The asserted patents all share a common specification.[1] The claims of the asserted patents are directed to two different aspects: (1) the '052, '477, and '287 patent claims relate to a console system for treating skin (collectively, the "console patents"); and (2) the '641 and '642 patent claims relate to a handpiece's tip for a skin treatment system (collectively, the "tip patents"). All of the asserted patents will expire in less than three months, on March 29, 2026.

[1] Because each of the '052 patent, '287 patent, '477 patent, '641 patent, and '642 patent share a common specification, AMP primarily cites the relevant column and line numbers of the '052 patent or the '641 patent where applicable. The same content is present in the specifications of all the asserted patents.

The asserted patents are all part of the same large family of patents, claiming priority back to Provisional Application Serial Nos. 60/755,310 filed December 30, 2005 and 60/764,668 filed February 2, 2006. Furthermore, all of the asserted patents incorporate the provisional applications by reference, which means that the entire contents of both provisional applications are part of the asserted patents themselves. *E.g.*, *Telemac Cellular Corp. v. Topp Telecom, Inc.*, 247 F.3d 1316, 1329 (Fed. Cir. 2001) ("When a document is 'incorporated by reference' into a host document, such as a patent, the referenced document becomes effectively part of the host document as if it were explicitly contained therein."). The patent family is depicted graphically in the Patent Family Chart attached as Exhibit 1.

While HF has filed numerous suits on the patents in this family, only one of the terms proposed for construction here ("fluid control member") has been construed previously, in a preliminary initial determination by an Administrative Law Judge in ITC Investigation No. 1408. Ex. 2 (*Certain Hydrodermabrasions Sys. & Components Thereof*, Inv. No. 337-TA-1408, Order No. 50, Explanation of Claim Terms Construed in Order Nos. 29 & 32 (June 11, 2025)); *see also* Exs. 3 (Inv. 1408, Order No. 29), 4 (Inv. 1408, Order No. 32).

The remaining terms at issue here have never been construed before. First, the terms "spiral-like" and "abrade" in the claims of the tip patents have not previously been the subject of any judicial order interpreting or applying the claims. Similarly, the terms "fluid," "treatment fluid," and "treatment material" of the asserted patents also have never been the subject of a full claim construction analysis. In the ITC ALJ's initial determination, she assumed that "fluid" and "treatment material" require liquid, but failed to perform a proper claim construction analysis. Ex. 39 at HF-AMP_CC_0000162-165; *infra* § IV.A.1.d.

III. LEGAL PRINCIPLES AND CANONS OF CLAIM CONSTRUCTION

A patent's specification "is the single best guide to the meaning of a disputed term." *Phillips v. AWH Corp.*, 415 F.3d 1305, 1315 (Fed. Cir. 2005) (en banc). Claim language should be given "its meaning to the ordinary artisan after reading the entire patent." *Id.* at 1321. "The patent system is based on the proposition that claims cover ***only the invented subject matter***." *Id.*[2] Several canons of claim construction safeguard that bedrock principle.

A. If a Patentee Defines a Term in the Specification, that Definition Controls

"When a patentee explicitly defines a claim term in the patent specification, the patentee's definition controls." *Martek Biosciences Corp. v. Nutrinova, Inc.*, 579 F.3d 1363, 1380 (Fed. Cir. 2009); *see also Phillips*, 415 F.3d at 1316 ("[T]he inventor's lexicography governs" when the specification "reveal[s] a special definition given to a claim term by the patentee that differs from the meaning it would otherwise possess."), 1321 ("[T]he specification 'acts as a dictionary when it expressly defines terms used in the claims….'"). Thus, "the patentee must be bound by the express definition." *Sinorgchem Co., Shandong v. Int'l Trade Comm'n*, 511 F.3d 1132, 1136 (Fed. Cir. 2007).

When a patentee starts a section with "as used herein" and "places each phrase in quotation marks [it] confirms that lexicography is afoot." *Google LLC v. Nobots LLC*, No. 2024-1432, 2025 WL 3240056, *1 (Fed. Cir. Nov. 20, 2025); *see also Parkervision, Inc. v. Vidal*, 88 F.4th 969, 976 (Fed. Cir. 2023) ("The patentee's use of the phrase[] 'as used herein' ... conveys an intent for sentence 5 [of the specification] to be definitional."); *Kyocera Senco Indus. Tools Inc. v. Int'l Trade Comm'n*, 22 F.4th 1369, 1378 (Fed. Cir. 2022) (finding binding lexicography where the patentee used the phrase "also sometimes referred to herein as").

[2] Emphasis herein is added unless otherwise noted.

B. An Express Definition in the Specification Can Only Be Overcome Through a Clear and Unmistakable Surrender by the Inventors

"Public notice is a central policy, public reliance is a known reality, precision is at a premium, and the applicant has ample control over provision of definitions, so when a definition is expressly stated, the public is generally entitled to expect clear notice of exceptions." *Alnylam Pharms., Inc. v. Moderna, Inc.*, 138 F.4th 1326, 1334 (Fed. Cir. 2025). The standard for such exceptions, called "disavowals" of claim scope, is "exacting." *Thorner v. Sony Computer Ent. Am. LLC*, 669 F.3d 1362, 1366 (Fed. Cir. 2012). "To balance the importance of public notice and the right of patentees to seek broad patent coverage," alleged disavowals must be "both so clear as to show reasonable clarity and deliberateness ... and so unmistakable as to be unambiguous evidence of disclaimer." *Omega Eng'g, Inc. v. Raytek Corp.*, 334 F.3d 1314, 1325 (Fed. Cir. 2003). Consequently, a definition in a patent specification can only be overridden by "clear and unambiguous disavowal of claim scope," (*id.*) for example during patent prosecution. *01 Communique Lab'y, Inc. v. LogMeIn, Inc.,* 687 F.3d 1292, 1297-1300 (Fed. Cir. 2012) (district court erroneously construed "locator server computer" to be limited to a single computer where the specification expressly defined it to include multiple computers and there was no clear and unambiguous disavowal during prosecution).

C. The Claim Definiteness Requirement of 35 U.S.C. § 112, ¶ 2

Patent claims must "particularly point[] out and distinctly claim[] the subject matter which the applicant regards as his invention." 35 U.S.C. § 112, ¶ 2. It "cannot be sufficient that a court can ascribe ***some*** meaning to a patent's claims." *Nautilus, Inc. v. Biosig Instruments, Inc.*, 134 S.Ct. 2120, 2130 (2014) (emphasis original). Rather, 35 U.S.C. § 112, ¶ 2 "require[s] that a patent's claims, viewed in light of the specification and prosecution history, inform those skilled in the art about the scope of the invention ***with reasonable certainty***." *Id.* at 2129.

Sometimes patent applicants draft their claims using a "term of a degree," which is a type of relative terminology that attempts to describe a value or characteristic by reference to an object. Manual of Patent Examining Procedure § 2173.05(b). For example, terms of degree include "similar," "about," "essentially," "substantially," and the addition of the word "type" to an otherwise definite expression. *Id.*, § 2173.05(b)(III). "If a claim employs a term of degree, the intrinsic record [particularly, the patent specification and prosecution history] must provide those skilled in the art with 'objective boundaries' with which to assess the term's scope." *In re Walter*, 698 F. App'x 1022, 1026-27 (Fed. Cir. Aug. 21, 2017) (quoting *Interval Licensing LLC v. AOL, Inc.*, 766 F.3d 1364, 1371 (Fed. Cir. 2014)). If not, the term of degree is indefinite. *In re Walter*, 698 F. App'x at 1026-27 (finding the term "block-like" indefinite because "nothing in the specification, prosecution history, or [prior] art provides any indication as to what range of [structures] is covered by the term").

D. Extrinsic Evidence May Not Contradict the Intrinsic Evidence

Extrinsic evidence, such as technical dictionaries or expert testimony, may "help educate the court regarding the field of the invention and can help the court determine what a person of ordinary skill in the art would understand claim terms to mean," but such evidence is less significant to claim construction than the intrinsic record, *i.e.*, the patent specification and file history. *Phillips*, 415 F.3d at 1319. Extrinsic evidence can never be used to contradict the patent specification itself. *Id.* at 1318 (expert testimony is "less reliable" than the specification since it "is generated at the time of and for the purpose of litigation and thus can suffer from bias that is not present in the intrinsic evidence"); *Omega Eng'g*, 334 F.3d at 1332 ("[E]xpert testimony and declarations ... cannot be used to vary the plain language of the patent document.").

IV. CONSTRUCTION OF CLAIM TERMS IN DISPUTE

A. Related "fluid" / "treatment fluid" / "treatment material" terms

Claim Term	Applicable Asserted Claims	HF's Proposed Construction	AMP's Proposed Construction
fluid	'052 patent, claims 1-2, 4-6, 11, 13, 15[3] '287 patent, claims 11, 16, 22-23, 25 '477 patent, claims 1, 6, 9, 15 '641 patent, claims 1, 10, 15 '642 patent, claims 1, 3, 4, 10, 11	Plain and ordinary meaning. No construction necessary. If construed: "liquid or gas"	"includes but is not limited to, medicament, a substance tending to flow or conform to the outline of its container such as fluid, gas, liquid (e.g., serums, water, saline, etc.), gel, fluidized material, additives, and/or a plurality of fine solids."
treatment fluid	'287 patent, claims 16, 23	Plain and ordinary meaning. No construction necessary. If construed: "liquid for treating skin"	Same as "fluid" term.
treatment material	'052 patent, claims 1-2, 6, and 11-13 '287 patent, claims 11-12, 16, 18, 22[4] '477 patent, claims 1, 3, 8, 9, 12, 14-15, 18, 20		

The parties agree that the terms "treatment fluid" and "treatment material" should have the same definition. The parties' proposals, however, have one primary area of disagreement—whether the patentee should be held to the express definitions provided in the patent specification (AMP's position) or not (HF's position).

[3] HydraFacial's final claim construction chart incorrectly refers to claim 3 of the '052 patent which does not use the word "fluid," and unasserted claims 10 and 17 of the '052 patent, as well as an unasserted patent ("'089 patent").

[4] HydraFacial's final claim construction chart incorrectly refers to unasserted claims 13 and 15 of the '287 patent.

1. "treatment material"

a. The Specification Provides an Express Definition, Which Includes "a plurality of fine solids"

The inventors broadly defined "treatment material" to include "fluid, gas, liquid ... gel, fluidized material, additives, and/or a plurality of fine solids" ('052 patent at 5:35-42):

> ***As used herein***, ***the term "treatment material"*** is a ***broad*** term and includes, but is not limited to, medicament, a substance tending to flow or conform to the outline of its container such as ***fluid, gas, liquid*** (e.g., serums, water, saline, etc.), ***gel, fluidized material, additives, and/or a plurality of fine solids***. The general term "fluid" is used throughout synonymously with the term "treatment material" and is to be given the same broad definition.

The phrase "as used herein," and the quotation marks around "treatment material," unmistakably convey that an express definition follows. *Google*, 2025 WL 3240056 at *1 ("[T]he section starts with 'as used herein'…[and] places each phrase in quotation marks to confirm that lexicography is afoot."); *Parkervision*, 88 F.4th at 976 ("the phrase[] 'as used herein' ... conveys an intent ... to be definitional"); *Kyocera*, 22 F.4th at 1378. Yet HF seeks to narrowly construe "treatment material" to just "liquid for treating skin" by ignoring the explicit definition in the specification. HF's goal is to avoid the Greenberg prior art reference (Ex. 40), which discloses the claimed invention and uses solid particles as the treatment material.

By its own terms, the definition of "treatment material" is "broad." It expressly encompasses "fluid, gas, liquid (e.g., serums, water, saline, etc.), gel, ***fluidized material***, additives, and/or ***a plurality of fine solids***." "Fluidized material" means "a finely divided solid ... caused to behave in the manner of a fluid by its being suspended in a moving gas or liquid." Ex. 5 (*Academic Press Dictionary of Science and Technology* (1992)) at AMP_00014379 (defining "fluidization"). Unlike HF's proposed construction, AMP's proposed construction mirrors the inventors' express definition, which is included in the specification of each of the relevant patents. '052 patent, 5:35-42; '287 patent, 5:47-54; '477 patent, 5:38-45.

b. HF's Expert Testimony Contradicts the Specification

HF's expert, Mr. Karl Leinsing, argues in his claim construction report that the inventors intended to exclude from their claims "old-style 'microdermabrasion' treatments performed through the emission of streams of sand, grit, or other solid substances." Leinsing, ¶ 39. Mr. Leinsing argues that, because the asserted patents address "delivery of fluids to the skin as opposed to a plurality of fine solids like in a microdermabrasion treatment," "the 'plurality of fine solids' [in the specification's definition of 'treatment material'] is at odds with the specification's description of hydrodermabrasion," (*id.*) and thus "treatment material" must be a liquid, despite the patents' more expansive express definition. *Id.*, ¶ 42.

To the contrary: two provisional applications, both ***incorporated by reference*** ('052 patent, 1:10-15), include claims specifying that "fluid sources" can be for microdermabrasion. Ex. 6 at HF-MPR_01080517 (claim 1, reciting a "plurality of ***fluid sources***"; claim 6, reciting wherein treatment is "selected from the group consisting of dermabrasion, ***microdermabrasion***, and crystal-free microdermabrasion"); Ex. 7 at HF-MPR_01080592 (claims 1, 6). Thus, "fluid"—and by extension "treatment material," which is synonymous with "fluid" ('052 patent at 5:35-42)—clearly includes microdermabrasion particles (*i.e.*, "a plurality of fine solids").

While the use of liquid treatment material may be a "preferred" approach to practicing the claimed invention, it is well-settled that "it is improper to read limitations from a preferred embodiment described in the specification—even if it is the only embodiment—into the claims absent a clear indication in the intrinsic record that the patentee intended the claims to be so limited." *GE Lighting Sols., LLC v. AgiLight, Inc.*, 750 F.3d 1304, 1309 (Fed. Cir. 2014). Here, the specification clearly communicates, *inter alia* via the express definition and via its incorporation-by-reference of the provisional applications, that use of solid particles as the claimed treatment materials and fluids ***is*** within the scope of the invention.

Mr. Leinsing also cites ambiguous passages using "wet" and "dry" to describe different treatment modes: Leinsing, ¶¶ 35, 42 (citing '052 patent, 6:15-18, 6:20-25, 13:3-15). In context, these passages distinguish between (1) using treatment materials from multiple containers; (2) using a single treatment material; and (3) using no treatment material (described as "dry" because the handpiece is just used to "exfoliate skin" without applying any treatment material).[5] '052 patent, 6:9-25, 13:3-21. In short, the ambiguous passages appear to use the word "wet" simply to describe treatments in which some type of material is applied, as opposed to "dry" procedures in which skin is abraded without applying any material. Given the critical public notice function of patents, such ambiguous passages cannot overcome the clear definition of "treatment material" encompassing "a plurality of fine solids." *Alnylam*, 138 F.4th at 1334 ("[T]he applicant has ample control over provision of definitions, so when a definition is expressly stated, the public is generally entitled to expect clear notice of exceptions.").

c. HydraFacial's Prosecution of the Asserted Patents and Related Applications Confirms that "treatment material" includes "a plurality of fine solids"

During prosecution of the asserted patents and related applications, the Examiner repeatedly rejected the claims as obvious over U.S. Patent Publication No. 2001/0049511 ("Coleman"). Coleman discloses a skin treatment system including multiple containers. One such container, labeled 60A, "is used to contain a benign abrasive," meaning solid particles. Ex. 8 (Coleman) at [0058]; Leinsing, ¶ 37. The Examiner took the same broad view that the inventors conveyed in the specification via their definition, and repeatedly found that the solid particles contained in Coleman's container 60A constitute "fluid" and "treatment material."

[5] An example of the latter would be so-called "additional handpieces" for "abrasion[] or 'crystal-free' microdermabrasion." '052 patent, 18:35-44.

Ex. 9 ('052 patent file history excerpts) at HF-MPR_01126570 (Examiner finding that Coleman's container 60A is a "fluid container"), HF-MPR_01126500 (same); Ex. 10 ('477 patent file history excerpts) at HF-MPR_01126788 (Examiner finding that Coleman's container 60A is a "fluid source"), HF-MPR_01128437 (Examiner finding that Coleman's container 60A "is configured to contain treatment material"), HF-MPR_01128607-608 (Examiner finding that the "abrasive" in Coleman's container 60A is a "treatment material"); Ex. 11 (18/638,470 file history excerpts) at AMP_00021023 (Examiner finding "fluid" in Coleman's container 60A), AMP_00021190 (same), AMP_00021255 (same).

Likewise, the Examiner concluded that the containers of Greenberg (Ex. 40) also contain "fluid" and "treatment material." Greenberg's containers are filled with the very same abrasive particles that HF seeks to exclude via its narrow construction (since AMP relies on Greenberg to invalidate the asserted patent claims). Thus, the Examiner's view directly contradicts HF's claim construction position. Ex. 9 at HF-MPR_01126502-03 (Examiner finding that Greenberg's particle-filled container 18 contains "fluid" and "treatment material"); Ex. 10 at HF-MPR_01128608-09 (Examiner finding that Greenberg's containers contain "treatment material"), HF-MPR_01128441-42 (same). The Examiner's consistent view that solid particles constitute "fluid" and "treatment material" confirms that the inventors' broad definition in the patent specification—including "a plurality of fine particles"—is the correct construction for these terms. *See St. Clair Intell. Prop. Consultants, Inc. v. Canon Inc.*, 412 F. App'x 270, 276 (Fed. Cir. 2011) ("Because an examiner ... can be considered one of ordinary skill in the art, his construction of the asserted claims carries significant weight."); *Deere & Co. v. Bush Hog, LLC*, 703 F.3d 1349, 1358-59 (Fed. Cir. 2012) (a claim limitation should not be construed to exclude that which the Examiner found, during prosecution of the patent, that it covers).

Ignoring all of the Examiner's foregoing statements, HF's expert refers to a single Examiner comment during prosecution of the '287 patent that the particles in Coleman's container 60A fail to qualify as "fluid." Leinsing, ¶ 37. This stray comment cannot overcome the inventors' express definition. First, Mr. Leinsing omits that, in response to the comment, the applicants insisted they did ***not*** acquiesce to the examiner's views, including regarding Coleman. Ex. 12 ('287 patent file history excerpt) at HF-MPR_01130749. This is the opposite of a disclaimer, and cannot overcome the definition provided by the applicants in the specification. *3M Innovative Properties Co. v. Tredegar Corp.*, 725 F.3d 1315, 1332 (Fed. Cir. 2013) ("[W]e rest on the statements made by the patentee over conflicting statements of an examiner[.]").

Second, Mr. Leinsing omits that the same Examiner, both before and after this single instance, explained that the solid particles in reservoir 60A of Coleman ***do*** qualify as "fluid" and "treatment material." Ex. 10 at HF-MPR_01128607-608; Ex. 11 at AMP_00021023. The examiner's stray, solitary contrary comment during prosecution of the '287 patent is an aberration, and certainly does not constitute a clear and unmistakable surrender of subject matter by HF. Indeed, the only way to overcome an inventor's lexicography is through ***the inventor's own*** clear and unambiguous disavowal of claim scope. *E.g.*, *Omega Eng'g*, 334 F.3d at 1325; *Alnylam*, 138 F.4th at 1334; *01 Communique*, 687 F.3d at 1297-1300. There is no such disavowal by the inventor here.

d. The ALJ's Initial Determination Omits a Proper Claim Construction Analysis and Assumes an Incorrect Construction

HF is expected to rely on an initial determination ("ID") of an Administrative Law Judge in ITC Investigation No. 1408 (Ex. 39)—a preliminary decision of an ALJ (***not*** of the ITC itself, 19 C.F.R. § 210.42) that has no preclusive effect, *Hyosung TNS Inc. v. Int'l Trade Comm'n*, 926 F.3d 1353, 1358 (Fed. Cir. 2019), and further did not even involve AMP.

The 1408 investigation involved only the '287 patent, and the ALJ concluded that Greenberg (Ex. 40) "Does Not Disclose the 'Fluid Limitations.'" Ex. 39 at 106. In her opinion, however, the ALJ essentially assumed that these limitations require liquid. While she briefly acknowledged the specification's broad definition of "treatment material" and "fluid," *id.* at 109, she ignored it based on the '287 patent's purportedly different "focus" (presumably, its focus on ***liquid*** treatment material) without acknowledging that, as a matter of law, (1) the inventor's definition controls; (2) only a clear and unmistakable surrender by the applicants can overcome a clear definition in the specification, and (3) it is error to limit claims to covering only a preferred embodiment. Further, the ALJ relied heavily on the '287 patent's purported distinction of microdermabrasion, without ever addressing the incorporated-by-reference provisional applications' claims, which show that "fluids" cover solid microdermabrasion particles. Finally, the ALJ never even mentioned the Examiner's repeated findings, during prosecution of the '052 patent, the '477 patent, and other applications in the family, that Greenberg's particles and Coleman's particles qualify as claimed "fluids" and "treatment materials."

In short, the ALJ's non-binding initial determination fails to provide relevant analysis that should influence this Court's claim construction for the "treatment material" and "fluid" terms. Further, because the '287 patent is going to expire before HF can secure any relief at the ITC, the Commission is expected to vacate the ID in its entirety under *U.S. v. Munsingwear, Inc.*, 340 U.S. 36, 36-37 (1950). AMP will notify the Court if/when that happens.

2. "fluid": The Specification Defines "fluid" Synonymously With "treatment material"

The inventors expressly stated that "[a]s used herein ... [t]he general term 'fluid' is used throughout synonymously with the term 'treatment material' and is to be given the same broad definition." '052 patent at 5:35-42.

Contrary to this express statement in the specification, HF proposes different constructions for the terms "fluid" and "treatment material." HF's Final Proposed Construction ("fluid," if construed: "liquid or gas" versus "treatment material," if construed: "liquid for treating skin"). HF again ignores that the specification's use of the phrases "as used herein" and the quotation marks around the phrases "fluid" and "treatment material," unmistakably convey that the specification is offering an express definition. *Google*, 2025 WL 3240056 at *1; *see also Parkervision*, 88 F.4th at 976; *Kyocera*, 22 F.4th at 1378. The specification even describes that the terms "fluid" and "treatment material" should be given "***the same broad definition***." '052 patent at 5:35-42. Thus, "fluid" should get the same construction as "treatment material," provided in the specification itself. *Supra* § IV.A.1.

3. "treatment fluid": HF Agrees that "treatment fluid" Should Receive the Same Construction as "treatment material"

The term "treatment fluid" is merely a combination of "fluid" and "treatment material." HF agrees that, if construed, the terms "treatment material" and "treatment fluid" should get the same construction. And, as explained above, the inventors expressly defined the term "fluid" as "synonymous" with the "broad definition" given to the term "treatment material." Therefore, the Court should adopt AMP's proposed constructions that the related "fluid" / "treatment fluid" / "treatment material" terms all mean "includes but is not limited to, medicament, a substance tending to flow or conform to the outline of its container such as fluid, gas, liquid (e.g., serums, water, saline, etc.), gel, fluidized material, additives, and/or a plurality of fine solids."

4. HydraFacial Should Be Held to Its Own Express Definition

HydraFacial had complete control over prosecution of its patents. Had it wanted narrower claims covering only "liquid" treatment materials, it could have drafted its claims using the word "liquid." There is thus nothing unfair about holding HydraFacial to its own definition.

Honeywell Int'l, Inc., v. ITT Indus., Inc., 452 F.3d 1312, 1318 (Fed. Cir. 2006) ("The public is entitled to take the patentee at his word."). The reason is simple. A patent is a bargain between the patentee and the public, but procurement of the patent is an *ex parte* process in which the public cannot participate. Accordingly, "as between the patentee who had a clear opportunity to negotiate broader [or narrower] claims but did not do so, and the public at large, it is the patentee who must bear the cost of its failure to seek protection" for particular subject matter. *Cross Med. Prods., Inc. v. Medtronic Sofamor Danek, Inc*., 480 F.3d 1335, 1344 (Fed. Cir. 2007); *see also Miken Composites, L.L.C. v. Wilson Sporting Goods Co.*, 515 F.3d 1331, 1337 (Fed. Cir. 2008) (had the patentee, who is "responsible for drafting and prosecuting the patent, intended something different, it could have prevented this result through clearer drafting"); *Ethicon Endo-Surgery, Inc. v. U.S. Surgical Corp.*, 93 F.3d 1572, 1583 (Fed. Cir. 1996) ("Ethicon need not have included this limitation in its claim. Having done so, it must live with the language it chose."); *cf. 01 Communique*, 687 F.3d at 1297-1300 (holding the patentee to its express definition in the specification where there was no clear and unambiguous disavowal).

B. "spiral-like" ('641 patent, claims 1, 10, and 15; '642 patent, claims 1 and 8[6])

HydraFacial's Proposed Construction	AMP's Proposed Construction
Plain and ordinary meaning. No construction necessary. If construed: "similar to a spiral"	Indefinite

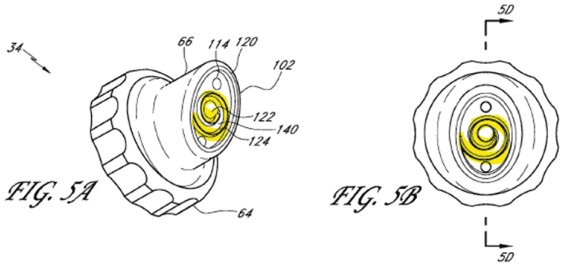
1. The Specification Provides No Metes and Bounds for "spiral-like"

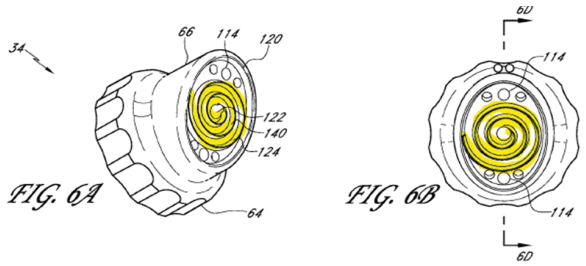
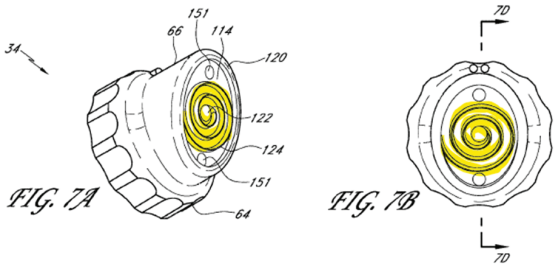
While terms of degree (such as "similar" or "about") are not *per se* indefinite, adding a term such as "-like" to a term without any supporting explanation in the specification obscures the metes and bounds of the claim—creating uncertainty as to what is covered by the claim.

[6] HydraFacial's final claim construction chart incorrectly refers to unasserted '642 claim 13.

Interval Licensing, 766 F.3d at 1371; *In re Walter*, 698 F. App'x at 1026 ("Here, 'block-like' is a term of degree without any accompanying guidance in the intrinsic record for determining its scope."); *Ex Parte Duffy*, 2015 WL 3489759, *2 (P.T.A.B. May 28, 2015) (finding the term "nub-like" indefinite and noting that while "portions of the Specification cited by Appellants describe and depict nubs (i.e., knobs, lumps, and protuberances[]), [the specification does] not provide any standard or guidance that would allow a skilled artisan to determine whether a structure that is not a nub is nevertheless [a] 'nub-like protrusion'"); *Ex Parte Smirnov*, 2021 WL 2473808, *2-3 (P.T.A.B. June 14, 2021) (affirming examiner's finding that "wave-like" is indefinite). Such is the case here.

"Spiral-like" is a term of degree without any accompanying guidance in the intrinsic record for determining its scope. "The term ostensibly covers a range of shapes that are sufficiently 'like' a '[spiral]' and excludes those that are not. But nothing in the intrinsic record offers 'objective boundaries' for ascertaining whether a given shape falls into either category." *In re Walter*, 698 F. App'x at 1026. The specification only shows examples of "spiral" shapes, and fails to inform a person of ordinary skill in the art what is sufficiently "like" a "spiral" to infringe. '641 patent, 2:33-35 ("An inner member extends in a generally spiral fashion across at least a portion of a distal face of the central body portion."), 9:53-58 (explaining that spirals may have varying numbers of revolutions), Figs. 5-7 (spirals highlighted below).

'641 Patent, Figs. 5A-5B	

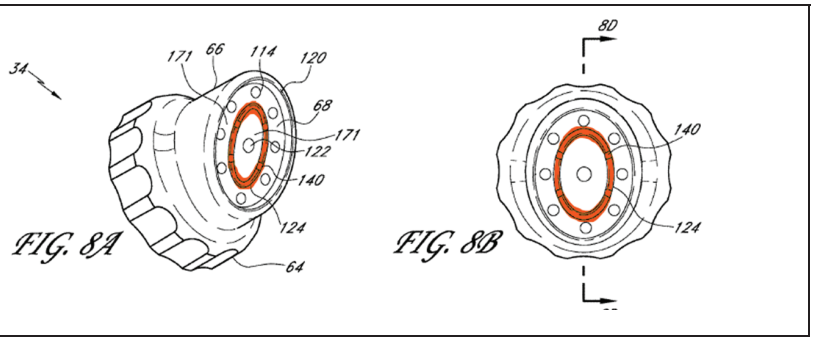
’641 Patent, Figs. 6A-6B	
’641 Patent, Figs. 7A-7B	

There is no dispute that the feature 124 in the figures is a spiral, with varying numbers of revolutions such as 1.5 times, 1.5 times or 1.75 times. ’641 patent, 9:53-58; Ex. 37 at AMP_00014384 (dictionary definition of spiral: “A curve on a plane that winds around a fixed center point at a continuously increasing or decreasing distance from the point.”). What the specification leaves unexplained is what it means to be sufficiently “like” a spiral to infringe. *Nautilus*, 134 S. Ct. at 2129 (“the patent drafter is in the best position to resolve the ambiguity in patent claims”); *In re Walter*, 698 F. App’x at 1026-27 (“block-like” indefinite); *Ex Parte Duffy*, 2015 WL 3489759, at *2 (“nub-like” indefinite); *Ex Parte Smirnov*, 2021 WL 2473808 at *2-3 (“wave-like” indefinite). Terms ending in “-like” can pass muster, but only if the specification provides a concrete explanation of how “like” the reference shape a device must be to practice the claim. *Cf. Ex Parte Brizard,* 2017 WL 2546740, *2 (P.T.A.B. June 8, 2017) (finding “triangular-like” not indefinite where the specification explained that “a triangular-like shape is a triangle whose vertices are replaced with curved corners 410a as shown in Figures 4C and 4D”).

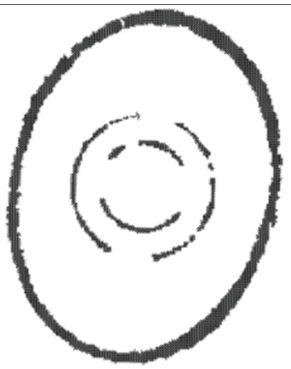
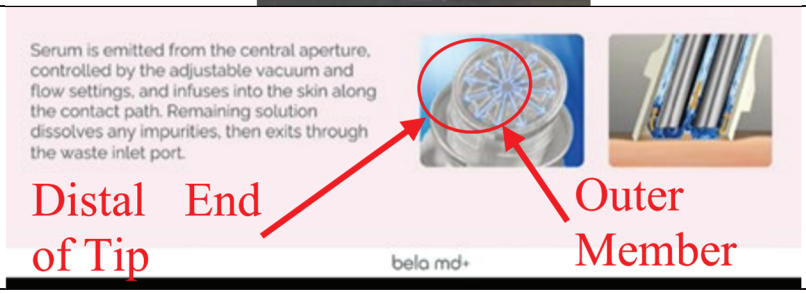
2. HydraFacial's Expert Confirms the Uncertainty Regarding the Term "spiral-like"

HF's expert, Mr. Leinsing, compounds the uncertainty. During his deposition he stated, "I don't see the difference between spiral or spiral-like. I think a person of skill in the art would understand those to have the same meaning." Ex. 13 (12/04/2025 Leinsing Depo.) at 14:17-21. But, as a matter of law, each word in a claim has meaning. *Lashify v. Int'l Trade Comm'n*, 130 F.4th 948, 964 (Fed. Cir. 2025) ("a claim construction that gives meaning to all the terms of the claim is preferred over one that does not do so"). It would thus be error to collapse "spiral-like" to mean, simply, "spiral." HF had complete control over the prosecution of the '641 and '642 patents. If HF had intended to cover only spirals, it was obligated to write "spiral" instead of "spiral-like" in its claims.

Mr. Leinsing did admit that a feature is ***not*** "spiral-like" if its radius does not continuously increase or decrease as it winds around a central point. Leinsing Depo. at 23:8-14. Referring to the patents' drawings, for example, he explained that while Figs. 5A-5B, 6A-6B, and 7A-7B depict a "spiral" (*see supra* pp.15-16), Figs. 8A-8B do ***not*** depict a "spiral-like" pattern. *Compare* Leinsing Depo. at 11:21-24 (Figs. 5A-5B), 11:17-20 (Figs. 6A-6B), 10:11-11:7 (Figs. 7A-7B), *with id.* at 15:21-16:4 (Figs. 8A-8B).

'641 Patent, Figs. 8A-8B	

Yet, HF has accused tips that resemble Figs. 8A-8B of the '641 and '642 patents of infringing the "spiral-like" claims. Ex. 14 (Complaint from *HydraFacial LLC v. BQ Aesthetix & Co.*, No. 0:25-cv-61262-AHS (S.D. Fla.)) at HF-MPR_01154435 (alleging that two ridges that form partial concentric circles are "spiral-like"); Ex. 15 (Complaint from *HydraFacial LLC v. Medicreations, LLC*, No. 2:24-cv-00855-MMD-DJA (D. Nev.)) at HF-MPR_01130946 (similar); Ex. 16 (Complaint from *HydraFacial LLC v. Luvo Medical Techs. Inc.*, No. 2:24-cv-00587 (D. Utah)) at AMP_00014452 (alleging that ridges in the form of radial spokes are "spiral-like").

BQ Aesthetix tip accused by HF of infringement. Ex. 17; *see also* Ex. 18-22.	 Stamp impression from BQ Aesthetix's Bellatrix Lueur Luxe tip
Medicreations tip accused by HF of infringement. Ex. 23; *see also* Exs. 24-27.	
Luvo tip accused by HF of infringement. Ex. 16 at AMP_00014452 (skewed annotations in original complaint filed by HF).	

When questioned at deposition about these shapes, HF's own expert admitted they are not, in fact, spiral-like. *Compare* Ex. 41 (Ex. 3 to Leinsing Depo.) *and* Ex. 13 (Leinsing Depo.) at 21:18-22:4, *with* Ex. 42 (Ex. 4 to Leinsing Depo) *and* Ex. 13 at 22:5-15. That HF is asserting infringement of the '641 and '642 patents, in federal district court, by products with features that its own expert admits are not "spiral-like" only deepens the uncertainty around the metes and bounds of what shapes are sufficiently "like" a spiral to infringe the claims of the '641 and '642 patents. Given the absence of any objective boundaries for "spiral-like" in the patents' specifications, the Court should find the term "spiral-like" indefinite.

3. HydraFacial's Proposed Construction Improperly Replaces One Indefinite Term ("-like") With Another ("similar to")

HF's proposed construction does not cure the ambiguity regarding the term "spiral-like." In fact, HF's proposed construction replaces the indefinite term "-like" with another indefinite term, "similar to." Courts should reject claim constructions that are themselves indefinite. *E.g.*, *Geneva Pharms., Inc. v. GlaxoSmithKline PLC*, 349 F.3d 1373, 1384 (Fed. Cir. 2003) (rejecting claim construction that was itself indefinite).

C. "abrade [skin / skin of a subject]" ('641 patent, claims 1, 10 and 15; '642 patent, claims 1 and 8[7])

HydraFacial's Proposed Construction	AMP's Proposed Construction
Plain and ordinary meaning. No construction necessary. If "abrade" is construed: "to wear away or remove"	"remove the surface of the skin due to mechanical rubbing by a rough or sharp member"

[7] HydraFacial's final claim construction chart incorrectly refers to unasserted '642 claim 14.

1. "plain and ordinary meaning" Will Not Help Jurors Understand the Claim Term "abrade"

The purpose of claim construction is "to give the finder of fact an understandable interpretation of claim scope to apply." *Avid Tech., Inc. v. Harmonic, Inc.*, 812 F.3d 1040, 1050 (Fed. Circ. 2016). "Plain and ordinary meaning," as proposed by HF, will not assist the jury in understanding the meaning of "abrade." Indeed, another federal court already explained this when ruling on claim construction for "abrade" in the context of a different HF patent. *Edge Sys., LLC v. Venus Concept USA Inc.*, 2019 WL 3936379, *2 (S.D. Fla. Aug. 20, 2019). The Southern District of Florida declined to adopt HF's proposed "plain and ordinary meaning" construction because it "very much doubts that, without additional explanation, the average juror will readily understand the word 'abrade.'" *Id.* This Court should reject HF's "plain and ordinary meaning" proposal for the same reason, and construe "abrade" in view of the disclosure of "the entire patent." *Phillips*, 415 F.3d at 1321.

2. The Specification Describes "abrasion" as Removal of Skin Due to Mechanical Rubbing With a Rough or Sharp Member

The background section of the specification provides a basic description of abrasion, as encompassing both dermabrasion and microdermabrasion. '641 Patent at 1:25-63. The specification describes both dermabrasion and microdermabrasion as procedures in which "the surface of the skin is removed due to mechanical rubbing." *Id.* at 1:37-40, 1:54-56. Further, the specification expressly states that "skin treatment" includes "skin abrasion (e.g., dermabrasion, microdermabrasion, etc.)." *Id.* at 5:26-29.

Per the background section of the specification, the difference between dermabrasion and microdermabrasion is what component is used to do the mechanical rubbing—either an "abrasive element that is often in the form of a burr, wheel or disc" or "a stream of sand or grit." *Id.* at 1:37-40, 1:54-56.

Thus, there can be no genuine dispute that abrasion involves the removal of skin due to mechanical rubbing. The remaining question, to properly understand "abrade" in the context of the '641 and '642 patent claims, is how that rubbing occurs—in the words of the claims, how the device is "***configured to*** abrade" skin.

The remainder of the specification consistently explains that, in the context of this invention, abrasion is accomplished with a device having a rough or sharp surface. *Id.* at 7:48-51 ("the tip can include ***sharp*** planning blades, blades (e.g., razor blades), raised ***sharp*** areas…"), 10:54-55 ("rotating the ***sharp*** inner members 124 against the skin 80"), 11:61-64 ("The post 124, for example, can have relatively ***sharp*** edges … to remove skin. In some embodiments, the inner members 124 can have relatively ***sharp*** planing blades."), 12:3-5 ("the plurality of protruding inner members 124 can ablate or ***roughen*** a plurality of smaller sections of the skin 80"), 14:1-2 ("***sharp*** tip 253 for removing tissue"), 14:7-9 ("The surface treatment 255 [of the inner member 124] can be serrations, grooves, grit, ***roughed surface***, protrusions, and the like.").[8] Other than the techniques described only in the background section (burr, wheel, disc, or stream of sand and grit, as noted above), the remainder of the specification never describes any configuration, other than a sharp or rough surface, for accomplishing the mechanical rubbing that achieves abrasion. Thus, after reading the entire specification, a person of ordinary skill in the art would understand "abrasion" in the '641 and '642 patent claims to be the removal of skin through mechanical rubbing with a "rough" or "sharp" member. *Phillips*, 415 F.3d at 1315, 1321.

[8] The structures listed in this quote are all consistent with AMP's proposed construction. For instance, serrations and grooves are sharp, and grit is rough.

3. HF Itself Consistently Describes "abrasion" as the Removal of Skin Using a Rough or Sharp Member

In complaints against other accused infringers, HF has consistently described the allegedly infringing "abrasion," in the claims of the '641 and '642 patents, as the removal of skin with a "sharp" or "rough" member. Ex. 15 (Complaint from *HydraFacial LLC v. Medicreations, LLC*, No. 2:24-cv-00855-MMD-DJA (D. Nev.)) at HF-MPR_01130895 ("The raised surfaces include edges that are ***sharp*** enough to abrade and exfoliate skin"), HF-MPR_01130946 ("***sharp*** enough to abrade when translated on the skin"); Ex. 28 (Complaint from *HydraFacial LLC v. Sinclair Pharma Ltd.*, No. 2:24-cv-06250-MEMF-MAR (C.D. Cal.)) at HF-MPR_01162354 ("The raised surfaces include edges that are ***sharp*** enough to abrade and exfoliate skin.").

Thus, HF's own application of the "configured to abrade" claim language in the '641 and '642 patent claims confirms that HF itself regards that language as requiring a structure that is "sharp" or "rough" and rubbed against the skin.

4. AMP's Proposal Is Consistent With Dictionary Definitions

Technical dictionaries further support that a person of ordinary skill in the art would understand "abrade" to mean "remove the surface of the skin due to mechanical rubbing by a rough or sharp member." *See Phillips*, 415 F.3d at 1319; Ex. 34 (*Friction and Wear of Materials* (2d ed. 1995)) at AMP_00014360 ("Abrasive wear arises when a hard, ***rough*** surface slides against a softer surface ... Abrasive wear can also arise in a somewhat different situation, when hard, abrasive particles are introduced between sliding surfaces and abrade material off each."); Ex. 35 (*Manufacturing Engineering & Tech.* (5th ed. 2006)) at AMP_00014366 ("An abrasive is a small, hard particle having ***sharp*** edges and an irregular shape…."); Ex. 43 (*McGraw-Hill Dictionary of Sci. & Tech. Terms* (5th ed. 1994)) at HF-AMP_CC_0000340 (abrasion: "2. A surface discontinuity brought about by ***roughening*** or scratching").

5. Conclusion Regarding "abrade"

It is not genuinely disputed that "abrade" requires removing skin due to mechanical rubbing. That is a basic feature of abrasion common to both the prior art (as explained in the background sections of the '641 and '642 patents) and the invention.

The only remaining question is what kind of structure performs the abrasion. The claims of the '641 and '642 patents all specifically require that a feature on the tip of the device (*i.e.*, the "inner member" or "proximal end of the tip") must be "configured to abrade." Thus, the '641 and '642 patent claims—unlike the claims of the console patents, which do not mention abrasion—require that abrasion be performed by a physical structure on the tip, rather than by particles, which are unquestionably legitimate "treatment materials" and "fluids" as discussed *supra* § IV.A. In the context of the '641 and '642 patents, which require that physical structures on the tip perform abrasion, the patent specification makes clear that those structures need to be rough or sharp to accomplish the claimed abrasion.

D. "fluid control member" ('287 patent, claim 11)

HydraFacial's Proposed Construction	AMP's Proposed Construction
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.	Plain and ordinary meaning

"Fluid control member" does not include the word "means," and thus there is a rebuttable presumption that means-plus-function analysis under pre-AIA 35 U.S.C. § 112, ¶ 6 does not apply. *Watts v. XL Sys., Inc.*, 232 F.3d 877, 880 (Fed. Cir. 2000). In any event, AMP believes there would be little, if any, difference, for this claim limitation, between a plain and ordinary meaning construction and a means-plus-function construction given the functions and structures proposed by HF. Accordingly, AMP attempted to simplify this dispute by proposing "plain and ordinary meaning" given that a § 112, ¶ 6 construction is unlikely to be meaningfully different. AMP asked HF to consider whether the parties could agree to the construction of "fluid control member" prior to the Patent Local Rule 4.2(c) Final Claim Construction deadline, in which case the parties could remove it from the list of terms the Court is being asked to construe. Ex. 38 (Email to HF). AMP did not receive a response from HF before the Final Claim Construction deadline.

AMP intends to review the issue with HF again before the parties' responsive claim construction briefs are due on February 4, 2026.

V. CONCLUSION

For the foregoing reasons, the Court should adopt AMP's proposed constructions for "fluid," "treatment material," "treatment fluid," "abrade," and "fluid control member." The Court should also find the term "spiral-like" indefinite.

Respectfully submitted,

Date: January 6, 2026

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