

**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

PLAINTIFF HYDRAFACIAL LLC'S OPENING CLAIM CONSTRUCTION BRIEF

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Plaintiff HydraFacial LLC (“Plaintiff” or “HydraFacial”) submits this Opening Claim Construction Brief for the disputed claim terms of U.S. Patent Nos. 9,550,052 (Exhibit B1¹) (the “’052 Patent”); 10,357,641 (Exhibit B2) (the “’641 Patent”); 10,357,642 (Exhibit B3) (the “’642 Patent”); 11,446,477 (Exhibit B4) (the “’477 Patent”); and 11,865,287 (Exhibit B5) (the “’287 Patent”) (collectively the “Asserted Patents”).

The Asserted Patents are directed to various technologies for treating skin and include straightforward claim language that would be readily understood by a factfinder. The asserted claims of the Asserted Patents do not present challenging issues of claim construction. Indeed, because the claims present HydraFacial’s novel innovations in clear, understandable terminology, HydraFacial has proposed only a single term for claim construction as a means-plus-function claim term. And for each of the other terms that AMP contends a construction is required, HydraFacial maintains that no construction is necessary and has provided constructions that align with the plain and ordinary meaning.

HydraFacial’s proposed ordinary meanings for the disputed claim terms are supported by the intrinsic evidence, including the claims, the specifications, and the relevant prosecution history. HydraFacial’s proposed constructions also align with the extrinsic evidence, including dictionary definitions. HydraFacial provides further support for its ordinary meaning constructions with the expert declaration of Karl R. Leinsing, MSME, PE. *See* Exhibit A (“Leinsing Decl.”).

AMP proposes six terms for construction. Several of these terms have already been construed by other courts or judges consistent with HydraFacial’s proposals. To that end, AMP’s constructions are contrary to previous constructions and attempt to import limitations not present

¹ Exhibits with numbers beginning with B are exhibits to the Declaration of Juliana H. Kirby (Exhibit B).

in the plain claim language. AMP's constructions are also not supported by the plain meaning of the disputed terms or the intrinsic evidence. This Court should reject AMP's constructions and accord each term its plain and ordinary meaning.

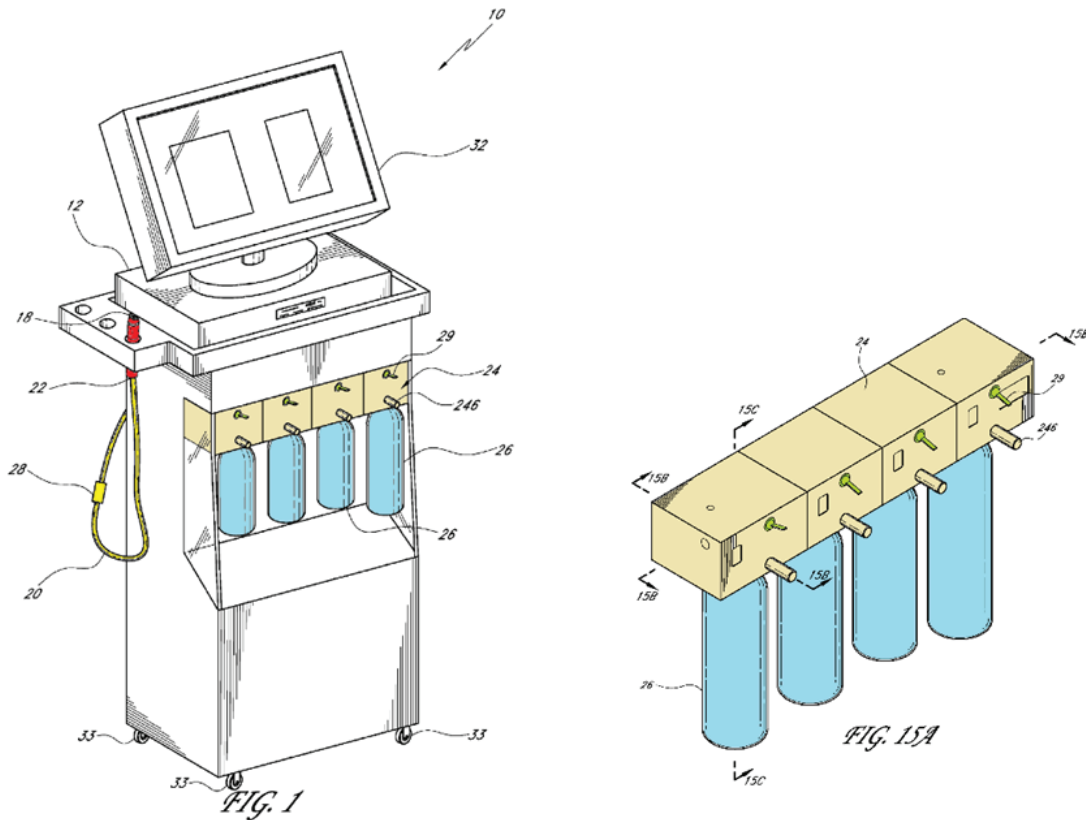
I. BACKGROUND AND PATENTED TECHNOLOGY

HydraFacial pioneered the field of hydrodermabrasion and is a worldwide leader in the design, development, manufacture, and sale of high-quality hydrodermabrasion systems. These systems rejuvenate skin by cleaning and exfoliating the skin surface, extracting debris from pores, and nourishing the skin's surface with multiple therapeutic solutions in a single treatment, sometimes called "treatment media." The treatment media can moisturize skin and protect the treated skin surface. HydraFacial markets and sells these systems throughout the United States to end users such as dermatologists, plastic surgeons, cosmetic physicians, and aestheticians at medical spas. HydraFacial created the field now known as "hydrodermabrasion," and HydraFacial's revolutionary hydrodermabrasion systems are protected by numerous United States patents, including the Asserted Patents.

A. The System Patents

The '052 Patent, '477 Patent, and '287 Patent (the "System Patents") disclose skin-treatment systems that apply a treatment fluid to a person's skin while simultaneously suctioning spent treatment fluid away from the skin and into a waste container. *See, e.g.*, '052 Patent² at 10:58-11:8. The user can select a desired treatment media from multiple treatment-fluid containers (shown in blue below).

² Each of the '052 Patent, '477 Patent, '287 Patent, '641 Patent, and '642 Patent share a common specification. Thus, HydraFacial cites the relevant column and line number of the '052 Patent where applicable.



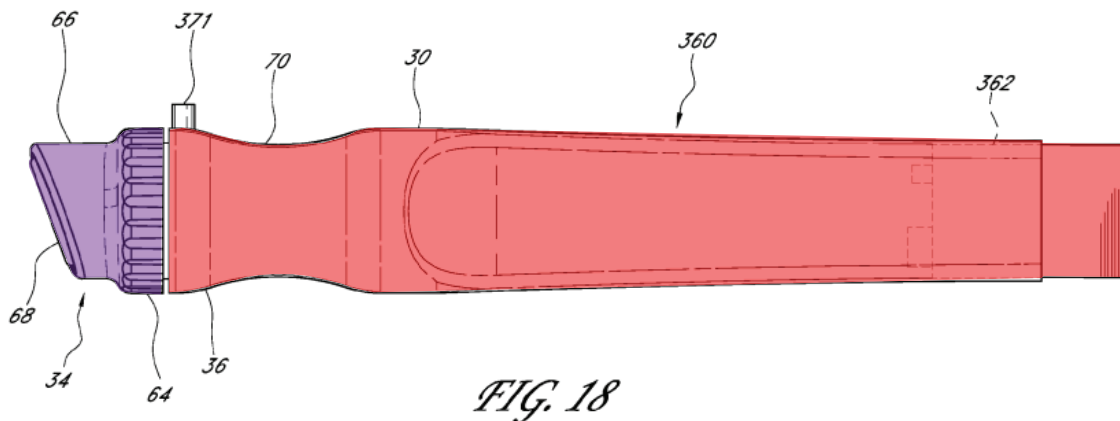
Id. at Figs. 1, 15A.

The disclosed systems include a manifold system (shown in beige above) that receives treatment fluid from the containers. *Id.* at 17:5–18:26. The manifold system can also include a collection lumen. The collection lumen can reside inside a block of the manifold system and collects fluid from fluid containers of the system. *Id.* at 17:5–7, 18:1–6. When there is at least one container connected to the console of the system, the manifold system is in fluid communication with the handpiece (shown in red above) through a supply conduit (shown in yellow above). *Id.* at 6:9–18. The patented system can also include a vacuum source which, when the user places the handpiece tip against the skin, creates an area of negative pressure inside the tip. *Id.* at 10:58–11:8. That negative pressure pulls the patient's skin against the handpiece tip. *Id.* The negative pressure also draws treatment fluid from the selected container while simultaneously suctioning waste into a waste conduit. *Id.* The multiple treatment fluid containers

allow the user of the system to select from which container the system draws fluid, thereby allowing for a customized, multi-step treatment for each patient. *Id.* at 17:5–17.

B. The Tip Patents

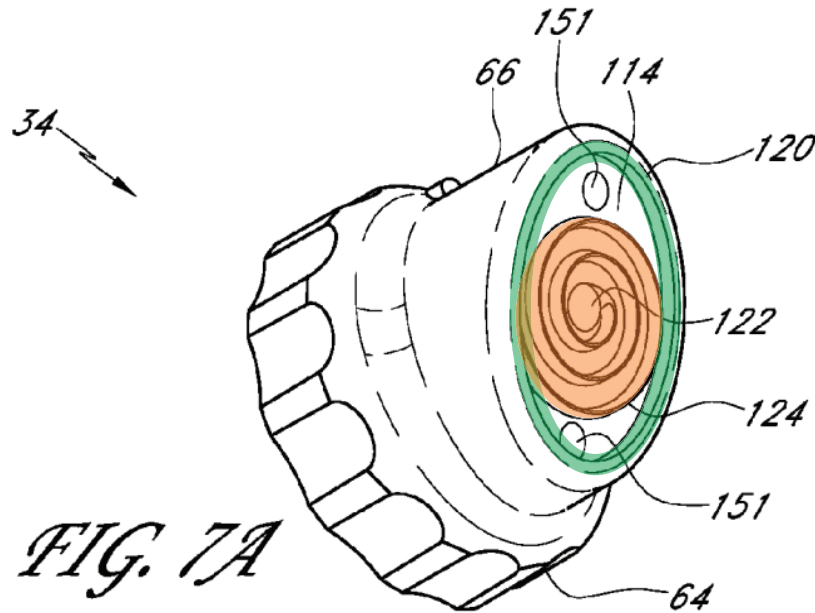
The '641 Patent and '642 Patent (collectively, the “Tip Patents”) disclose a tip for use in a skin treatment system that removably couples to a handpiece body (shown in red below) of the skin treatment system. '052 Patent at 7:8-10. The tip is part of the handpiece and allows for the delivery of fluids to the skin and removal of spent fluids and waste away from the skin. *Id.* at 7:25-37.



Id. at Fig. 18.

The tip can include an outer structure (shown in green below) and at least one inner structure (shown in orange below). The inner structure(s) form at least one gap through which fluid travels during a treatment. *Id.* at 9:34:46. During a treatment, when a user contacts skin with the outer structure, an area of negative pressure generates inside of the tip. *Id.* at 10:58–11:8. That negative pressure draws treatment fluid from a fluid source to the handpiece and through the body of the tip (shown in purple above), causing treatment fluid to be delivered to a distal end of the tip. *Id.* The negative pressure also causes the treatment fluid to travel through the gap(s) in the inner

structure(s), thus treating skin. *Id.* The used treatment fluid, now containing waste, is then suctioned away from the skin through the body of the tip away from the tip and handpiece. *Id.*



Id. at Fig. 7A.

II. LEGAL STANDARDS

A. Claim Construction

The construction of claims is simply a way of elaborating normally terse claim language in order to understand and explain, but not to change, the scope of the claims. *Terlep v. Brinkmann Corp.*, 418 F.3d 1379, 1382 (Fed. Cir. 2005). Courts construe claims according to the meaning they would have to a person of ordinary skill in the art (“POSA”) at the time the application was filed, in view of the intrinsic evidence: the claims, the specification, and prosecution history. *See Phillips v. AWH Corp.*, 415 F.3d 1303, 1312-13 (Fed. Cir. 2005) (*en banc*). Accordingly, “[t]he words of a claim are generally given their ordinary and customary meaning as understood by a person of ordinary skill in the art when read in the context of the specification and prosecution

history.” *Thorner v. Sony Comput. Ent. Am. LLC*, 669 F.3d 1362, 1365 (Fed. Cir. 2012). A “patentee is free to choose a broad term and expect to obtain the full scope of its plain and ordinary meaning unless the patentee explicitly redefines the term or disavows its full scope.” *Id.* 1367.

Generally, “[c]laims should be so construed, if possible, as to sustain their validity.” *Rhine v. Casio, Inc.*, 183 F.3d 1342, 1345 (Fed. Cir. 1999) (quoting *Carman Indus., Inc. v. Wahl*, 724 F.2d 932, 937 n. 5 (Fed. Cir. 1983)); *see also Smith v. Snow*, 294 U.S. 1, 14 (1935) (“[I]f the claim were fairly susceptible of two constructions, that should be adopted which will secure to the patentee *his actual invention*.”) (emphasis added). Courts should not adopt a construction of a term which renders claims invalid or meaningless unless it is the “only claim construction that is consistent with the claim’s language and the written description.” *Rhine*, 183 F.3d at 1345.

As the Federal Circuit explained *en banc*, “although the specification often describes very specific embodiments of the invention, we have repeatedly warned against confining the claims to those embodiments.” *Phillips*, 415 F.3d at 1323. “In particular,” the Federal Circuit explained, “we have expressly rejected the contention that if a patent describes only a single embodiment, the claims of the patent must be construed as being limited to that embodiment.” *Id.*

At the same time, the specification remains critically important. The specification “is always highly relevant to the claim construction analysis” and is “the single best guide to the meaning of a disputed term.” *Vitronics Corp. v. Conceptronic, Inc.*, 90 F.3d 1576, 1582 (Fed. Cir. 1996).

Like the specification, the prosecution history provides evidence of how the Patent Office and inventor understood the patent. *Phillips*, 415 F.3d at 1317. Also, the prosecution history may demonstrate whether the inventor limited the scope of the invention, making a claim term narrower than it otherwise would be. *Id.*

After reviewing the intrinsic evidence, courts may consider extrinsic evidence, including expert testimony, dictionaries, and treatises. *Id.* at 1314. Extrinsic evidence consists of all evidence external to the patent and prosecution history, including expert and inventor testimony, dictionaries, and learned treatises. *Vitronics*, 90 F.3d at 1584. Extrinsic evidence in the form of expert testimony “can be useful to a court for a variety of purposes, such as to provide background on the technology at issue, to explain how an invention works, to ensure that the court’s understanding of the technical aspects of the patent is consistent with that of a person of skill in the art, or to establish that a particular term in the patent . . . has a particular meaning in the pertinent field.” *Phillips*, 415 F.3d at 1318. Extrinsic evidence is “less significant than the intrinsic record” since it is generally “less reliable.” *Id.* at 1317-18. The Court should disregard extrinsic evidence that is at odds with the intrinsic record. *Id.* at 1317.

B. Means-Plus-Function under 35 U.S.C. § 112(6)

A means-plus-function claim term is one that “recites a function to be performed rather than definite structure or materials for performing that function,” and is governed by 35 U.S.C. § 112, ¶ 6. *Lockheed Martin Corp. v. Loral, Inc.*, 324 F.3d 1308, 1318 (Fed. Cir. 2003). In determining whether § 112(6) applies to a claim limitation, the Federal Circuit has “long recognized the importance of the presence or absence of the word ‘means.’” *Williamson v. Citrix Online, LLC*, 792 F.3d 1339, 1348 (Fed. Cir. 2015). Claims without the word “means” are presumed not to invoke § 112, ¶ 6. *Id.* at 1349. If the challenger fails to rebut the presumption, the inquiry ends. Thus, the second step of the inquiry—construing the function and identifying the corresponding structure in the specification—is only required if the challenger demonstrates that the claim fails to recite sufficiently definite structure to those having skill in the relevant art. *Apple Inc. v. Motorola, Inc.*, 757 F.3d 1286, 1296 (Fed. Cir. 2014), *overruled on other grounds by Williamson*, 792 F.3d at 1339. The “mere fact that the disputed limitation[] incorporate[s]

functional language does not automatically convert the words into means for performing such functions.” *Zeroclick, LLC v. Apple Inc.*, 891 F.3d 1003, 1008 (Fed. Cir. 2018).

If § 112(6) applies, then the claim term is “construed to cover the corresponding structure . . . described in the specification and equivalents thereof.” 35 U.S.C. § 112(6). “When multiple embodiments in the specification correspond to the claimed function, proper application of § 112, ¶ 6 generally reads the claim element to embrace each of those embodiments.” *Micro Chem., Inc. v. Great Plains Chem. Co.*, 194 F.3d 1250, 1258-59 (Fed. Cir. 1999) (citing *Serrano v. Telular Corp.*, 111 F.3d 1578, 1583 (Fed. Cir. 1997)).

“Whether the written description adequately sets forth the structure corresponding to the claimed function must be considered from the perspective of a person skilled in the art.” *Telcordia Techs., Inc. v. Cisco Sys., Inc.*, 612 F.3d 1365, 1376 (Fed. Cir. 2010) (citing *Intel Corp. v. VIA Techs., Inc.*, 319 F.3d 1357, 1365–66 (Fed. Cir. 2003)). When viewed in light of the knowledge of a POSA, the mere reference to a known object can provide sufficient structure for a means-plus-function limitation. *Atmel Corp. v. Info. Storage Devices, Inc.*, 198 F.3d 1374, 1382 (Fed. Cir. 1999). Further, when a structure is well-known, performs a common function, and can be readily implemented by a POSA based on the description in the specification, the structure need not be described in detail. *S3 Inc. v. NVIDIA Corp.*, 259 F.3d 1364, 1370-71 (Fed. Cir. 2001).

III. PERSON OF ORDINARY SKILL IN THE ART

A person of ordinary skill in the art at the time of the earliest priority date of the Asserted Patents would have had a degree in science or engineering plus a minimum of three years of experience in the medical device industry. Leinsing Decl. at ¶ 23. Alternatively, a product designer could have an additional two years of experience in the industry in lieu of a formal science or engineering degree. *Id.* 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. *Id.*

IV. ARGUMENT

A. “fluid control member” – ‘287 Patent, Claim 11

HYDRAFACIAL	AMP
Subject to 35 U.S.C. § 112(6) <u>Function:</u> “be in fluid communication with at least a first container and a second container” and “be in fluid communication with the handpiece assembly” <u>Structure:</u> “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

1. “fluid control member” is a means-plus-function term

The term “fluid control member” is governed by § 112(6) and does not confer a single specific structure in the context of the Asserted Patents. While “fluid control member” is not presumed to be a means-plus-function term, the Federal Circuit has found that “member” is a “non-structural generic placeholder.” *Kyocera Senco Indus. Tools Inc. v. Int’l Trade Comm’n*, 22 F.4th 1369, 1380 (Fed. Cir. 2022). The “fluid control” portion of the disputed term is functional language that does not confer additional structure. *See id.*; *Mas-Hamilton Grp. v. LaGard, Inc.*, 156 F.3d 1206, 1214 (Fed. Cir. 1998).

The only expert testimony provided for these claim construction proceedings confirms that “fluid control member” is a means-plus-function term without any accepted meaning in this

context. *See* Leinsing Decl. at ¶¶ 24–32. An Administrative Law Judge (“ALJ”) at the International Trade Commission (“ITC”) agreed, finding that “fluid control member” in the same claims was subject to § 112, ¶ 6. Exhibit B6 (“ITC CC Order”) at 3. AMP’s invalidity contentions plainly state “[t]he term[] ‘fluid control member’ as [a] nonce word[] are subject to means-plus-function analysis” and that “a POSA would be uncertain about its precise meaning.” Exhibit B7 at 89-90. Thus, the record confirms that “fluid control member” is a means-plus-function term and AMP has not presented any evidence to the contrary.

Despite this, AMP asserts that this term should be given its plain and ordinary meaning without stating what the plain and ordinary meaning is. Further, AMP’s current plain and ordinary meaning proposal differs from their original proposal, where AMP preliminarily proposed a means-plus-function construction for “fluid control member.” Exhibit B8. Regardless of their change in position, AMP’s current ordinary meaning proposal is unsupported and fails to provide a well understood meaning for this term. *Williamson*, 792 F.3d at 1348; *see also Greenberg v. Ethicon Endo-Surgery, Inc.*, 91 F.3d 1580, 1583 (Fed. Cir. 1996) (“What is important is ... that the term, as the name for structure, has a reasonably well understood meaning in the art.”).

2. “fluid control member” has many corresponding structures disclosed in the specification

As a “means-plus-function” claim term subject to 35 U.S.C. § 112(6), the claimed functions for the fluid control member are (1) “be in fluid communication with at least a first container and a second container,” and (2) “be in fluid communication with the handpiece assembly.” These functions come directly from the surrounding claim language. *See* ’287 Patent at claim 11. The specification’s corresponding structures for this recited function include the “manifold system 24” (’287 Patent at 17:17–18:37; Figures 15A-15D), the lumen 171 (18:15–18) and/or other structures such as “valves, fluid lines, and the like” (18:38–42). All these structures,

individually or combined, perform the recited function of being in fluid communication with the containers (including when the containers are connected to these structures) and with the handpiece assembly. Leinsing Decl. at ¶¶ 24–32. Accordingly, the corresponding structure for “fluid control member” could be a manifold system, lumen, or other valves, fluid lines and equivalents thereof. *Id.*

A POSA could have used the disclosed structures, including manifolds, lumens, fluid lines, and valves, to perform the recited functions of “be in fluid communication with” containers and with the handpiece. Leinsing Decl. at ¶ 26. These disclosed structures would provide a toolbox of potential parts and structures to use alone or in combination to perform the recited functions. *Id.* at ¶ 30. For example, based on the specification, a POSA could use a fluid line with one or more valves. *Id.* A POSA also could have used the disclosed manifold with multiple valves to perform the recited functions. *Id.* A POSA could use the disclosed central lumen in combination with fluid lines to perform the functions. *Id.* Alternatively, a POSA could use a combination of fluid line tubes interconnected with valves to perform the functions. *Id.* A POSA would have the knowledge and ability to implement these different options and combinations to perform the recited functions of the fluid control member. *Id.*

The ITC CC Order confirmed HydraFacial’s proposed construction is correct. The ALJ determined that “fluid control member” (1) is subject to § 112, ¶ 6; (2) should be accorded the function “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;” and (3) should be accorded the structure(s) “manifold system 24” (’287 Patent at 17:17–18:37; Figures 15A–15D), “switches 29” (17:21–22), “lumen 171” (18:15–18), or “valves, fluid lines, and the like” (18:38–42), and equivalents of these

structures. ITC CC Order at 1–2. The ALJ found that, “[a]lthough [HydraFacial] seeks a broader list of structures, these structures are disclosed in the specification.” *Id.* at 4. The ALJ subsequently identified where in the specification each structure HydraFacial proposes here performs the functions proposed by the parties here. *See id.* at 4–6.

Under § 112, ¶ 6, the “corresponding structure must include all structure that actually performs the recited function.” *Apple Inc. v. Samsung Elecs. Co., Ltd.*, 816 F.3d 788, 813–14 (Fed. Cir. 2016) (quoting *Cardiac Pacemakers, Inc. v. St. Jude Med., Inc.*, 296 F.3d 1106, 1119 (Fed. Cir. 2002)), reinstated, 839 F.3d 1034, 1040 (Fed. Cir. 2016) (*en banc*). The specification is clear that the alleged claimed function can be carried out by several different structures, for example, a manifold, a central lumen, valves, fluid lines and equivalents thereof—alone or in combination. Leinsing Decl. at ¶¶ 24–32. The ITC recognized the specification’s clarity on this point, finding that the specification links the structures HydraFacial identifies above with its proposed functions. ITC CC Order at 6. As the ALJ recognized, the corresponding structures cannot be limited to a manifold when the ’287 Patent discloses many other structures and parts that also perform the recited function. AMP cannot credibly argue that the structure(s) identified by HydraFacial do not perform the functions of the “fluid control member.” Because a POSA could have readily implemented the disclosed manifolds, valves, fluid lines, and lumens to achieve the recited functions, the specification discloses sufficient structure to allow a POSA to perform the claimed functions. *See Atmel*, 198 F.3d at 1382-83; *see also S3 Inc.*, 259 F.3d at 1370-71.

B. “fluid” – ’052 Patent, Claims 1-6, 10, 11, 13,15, and 17; ’477 Patent, Claims 1, 6, 9, and 15; ’287 Patent, Claims 11, 16, 22, 23, and 25; ’641 Patent, Claims 1, 10, and 15; and ’642 Patent, Claims 1, 3, 4, 10, and 11

HYDRAFACIAL	AMP
Plain and Ordinary Meaning – no construction necessary	“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.”
If construed: “liquid or gas”	

1. “fluid” should not be construed as a standalone term

AMP’s proposal to construe the term “fluid” separately from, and in addition to, “treatment fluid” and “fluid control member” is unhelpful and unnecessary. *IGT v. Bally Gaming Int’l, Inc.*, 659 F.3d 1109, 1117 (Fed. Cir. 2011) (“We caution that claim language must be construed in the context of the claim in which it appears. Extracting a single word from a claim divorced from the surrounding limitations can lead construction astray.”); *see also TZU Techs., LLC v. Vibease*, No. LV CV15-04907 JAK, 2016 WL 6836951, at *5 (C.D. Cal. May 6, 2016) (“Claim terms, even simple ones are not read in isolation, but in the context of the invention as a whole and from the viewpoint of how one skilled in the art would understand the scope of the claim.”) (citing *Phillips*, 415 F.3d at 1314). The word “fluid” is already included in different terms which are separately addressed herein. Thus, fluid should be construed as a standalone term.

2. Should the Court construe “fluid” separately, it should be given its ordinary meaning

The term “fluid” does not require construction. It is a well-understood term that will pose no difficulties for the jury. A POSA would understand that the technology at issue in the Asserted Patents concerns hydrodermabrasion. Leinsing Decl. at ¶¶ 33–39. A POSA would also understand that the additional surrounding terms in “fluid communication,” “treatment fluid,” and “fluid control member,” would inform a POSA as to specific meaning of these terms that may differ from

“fluid” as a standalone claim term. *Id.* If the term “fluid” is used as a standalone claim term (e.g., not as part of “fluid communication” or “treatment fluid”), it would be familiar to a POSA who would understand the meaning without any need for construction. *Id.*

The claims of the System Patents are directed to hydrodermabrasion, which involves the application of fluids from containers through a handpiece. *See e.g.*, ’052 Patent at Claim 1. Hydrodermabrasion systems are configured to deliver various liquid solutions to the skin of a patient using a handpiece with a tip that contacts the patient’s skin in order to improve and revitalize the skin. The treatment system applies treatment fluids to a person’s skin while simultaneously suctioning spent treatment fluid away from the skin and into a waste container. ’287 Patent at 5:63–6:2, 7:59–8:5. The specification further describes benefits of hydrodermabrasion as opposed to microdermabrasion involving abrasive particles or crystals. *Id.* at 1:24–2:10.

If it is necessary to construe the term “fluid” alone, then the Court should apply the ordinary meaning which is “liquid or gas.” Leinsing Decl. at ¶¶ 34–36. A POSA would understand that the specification’s use of “fluid” alone in the Asserted Patents is consistent with the ordinary meaning of fluid. *Id.* For example, the specification refers to “wet” versus “dry” modes of operating the systems, describing that during a “wet” mode of operation, “fluid can be passed out of the tip 34 onto the patient’s skin.” ’052 Patent at 13:3–15. Indeed, the specification of the Asserted System Patents goes to great lengths describing old-style microdermabrasion and its disadvantages compared to the present inventions of the System Patents which use fluids. *See* ’052 Patent at 1:24–2:10. And the ’052 Patent specifically references a “dry,” as opposed to “wet,” mode of operation wherein the console 12 exfoliates skin without delivering fluid to the skin. *Id.* at 6:20–25. A POSA would understand that the hydrodermabrasion of the System Patents differs

from old-style microdermabrasion systems based in part on the use of fluids instead of solids. Leinsing Decl. at ¶ 35. Thus, the specification confirms that, in general, fluids can include liquids or gases, but not solids.

The term “fluid” alone would have been commonly understood to mean a liquid or gas. *Id.* As explained below, a “treatment fluid” is a specific category of “fluid” that only includes liquids, as described and claimed in the Asserted Patents. *Id.* For example, a gas would not be a *treatment* fluid because this would be considered a dry mode or one which uses no treatment fluid. *See* ’052 Patent at 6:20–25. But the broader term “fluid” is not limited to treatment fluids and could include gases, but not solids. This ordinary meaning “liquid or gas” is consistent with the specification and also aligns with the basic definition of “fluid,” as provided in dictionary definitions from the relevant time period. Leinsing Decl. at ¶ 36 (citing Exhibits B12-B16).

3. “fluid” is not subject to lexicography, and if anything, is subject to disclaimer of abrasive particles included in AMP’s construction.

AMP’s construction stems from a single passage in the specification of the System Patents which mentions fluid generally. Based on this passage, AMP’s construction includes “a plurality of solids.” Leinsing Decl. at ¶¶ 38–39. However, in the context of the claimed hydrodermabrasion systems, a POSA would understand that the term “fluid” does not include solids. *Id.*; *see also* §IV.B.2, *supra*.

In fact, during the prosecution of the ’287 Patent, the examiner found that the Coleman prior art reference did not disclose that “all three containers contain fluid” because one of the containers contained only abrasive material. Exhibit B10 at 15 (October 11, 2023 office action, stating “Coleman fails to disclose that all three containers contain fluid.”). HydraFacial acquiesced to that interpretation of fluid by presenting new claims based on the examiner’s interpretation. *Id.* at 31. It is well established that failure to raise a direct challenge in response to an examiner’s

characterization results in acquiescence and disclaimer. *See TorPharm, Inc. v. Ranbaxy Pharm., Inc.*, 336 F.3d. 1322, 1330 (Fed. Cir. 2003) (“[T]he public is entitled to equate an inventor’s acquiescence to the examiner’s narrow view of patentable subject matter with abandonment of the rest.”). The applicant here not only acquiesced to the examiner’s finding but relied on it to obtain an allowable claim. Because the applicant disclaimed solids such as dry particles from the scope of “fluid,” any construction must be limited to liquid or gas.

AMP’s proposed construction is also contrary to prior decisions concerning the term “fluid” in the Asserted Patents. For example, in the ITC’s initial determination (“ID”), the ALJ determined that “dry, abrasive particles” are not “fluid” as the term is used in the ’287 Patent. Exhibit B9 at 138–139. The ALJ held that a POSA would not have replaced or modified “dry abrasive particles” with the type of fluid disclosed in the ’287 patent or that there would be an expectation of success in doing so. *Id.* The ALJ recognized the clear difference between “fluid” and solids such as dry particles in the context of the Asserted Patents. *Id.*

Thus, the intrinsic and extrinsic evidence supports rejecting AMP’s proposed construction and adopting the plain and ordinary meaning of “fluid” which is liquid or gas.

C. “treatment fluid” – ’287 Patent, Claims 16 and 23

HYDRAFACIAL	AMP
Plain and Ordinary Meaning – no construction necessary If construed: “liquid for treating skin”	“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.”

1. “treatment fluid” should be accorded its plain and ordinary meaning

“Treatment fluid” would be easily understood by a POSA and does not require construction. This term is not given a special definition in the specification, but a POSA would

understand that this term means a liquid for treating skin and excludes gas and solids in the context of the Asserted Patents. Leinsing Decl. at ¶¶ 40–45. The specification uses “treatment material” interchangeably with “treatment fluid.” ’052 Patent at 7:25–27 (“The input line 52 delivers *treatment material* from at least one of the containers 26 to the connector 46. The *fluid* then flows through the main body 30 and ultimately to the tip 34.”) (emphases added).

The specification makes it very clear that the term “treatment fluid,” in the context of the claimed hydrodermabrasion systems, is a liquid and not solids or gases. For example, the specification explains that during a “wet” mode of operation, “fluid can be passed out of the tip 34 onto the patient’s skin.” ’052 Patent at 13:3–15. On the other hand, in a “dry” mode of operation, the “console 12 can be used to exfoliate skin, for example, without delivering little or substantially no treatment fluid.” *Id.* at 6:15–25. The disclosed “dry” modes of operation, such as modes using solids as opposed to liquids, do not use a treatment fluid which is a wet liquid material. Leinsing Decl. at ¶ 35. The treatment fluids only correspond to the “wet” modes, and the “dry” modes are dry because they do not include the wet treatment fluids. *Id.* Thus, the specification clarifies that a “dry” mode does not use “treatment fluid” which must be a wet fluid, confirming that a “treatment fluid” is a liquid—not solids or gases. *Id.* The specification further teaches that the handpieces “are primarily discussed with respect to use with treatment material” but “can be used *without treatment material*, i.e., the handpieces can be used in a *dry procedure*.” *Id.* at 13:16–19 (emphases added). This further confirms that “treatment material” cannot correspond to a “dry” procedure and must be a liquid in the context of the claimed hydrodermabrasion systems. Thus, a POSA would readily understand the plain meaning of “treatment fluid” in the context of the claims of the System Patents to be liquid for treating skin. Leinsing Decl. at ¶ 42.

2. The specification's list of materials is not a definition or lexicography

To the extent the Court is inclined to consider AMP's request for a construction of "treatment fluid," and "treatment material," there was no lexicography for these terms. AMP relies on a single passage in the specification, but that list of materials merely provides examples of potential material that could generally be used in different systems. '052 Patent at 5:35-40. That list does not set forth a definition for these terms because treating it as such would conflict with the specification and intrinsic evidence. As explained in the previous section (IV.C.1), the specification describes "treatment fluid" as being a wet material that cannot be dry and is not solids. Further, the patent applicant disclaimed dry particles from the scope of treatment fluid during prosecution, as discussed in Section IV.B.3, *supra*. Thus, the specification and prosecution history confirm that the specification's list of potential materials cannot be a definition for "treatment fluid."

Further, in the ITC, the ALJ adopted HydraFacial's plain and ordinary meaning for these terms. There, the ALJ found that "the '287 patent does not even remotely suggest that 'dry particles' are liquids or fluids." Exhibit B9 at 109; *see id.* at 111 (finding that the abrasive dry particles of a prior art reference are not "fluids" under the term's ordinary meaning). The ALJ agreed with HydraFacial that the patent examiner for the application of the '287 Patent did not understand "fluid" to encompass fine solids, and in any event, the applicant relied on allowance over Coleman to obtain allowable claims including "treatment material" and "fluid" limitations, resulting in disclaimer. *Id.* at 109–113 (citing *TorPharm, Inc. v. Ranbaxy Pharm., Inc.*, 336 F.3d 1322, 1330 (Fed. Cir. 2003)). Thus, "treatment fluid," and "treatment material" should be accorded their plain and ordinary meaning which cannot include dry particles or a plurality of fine solids.

D. “treatment material” – ’052 Patent, Claims 1, 2, 6, and 11-13; ’477 Patent, Claims 1, 3, 8, 9, 12, 14, 15, 18, and 20; and ’287 Patent, Claims 11-13, 15, 16, 18, and 22

HYDRAFACIAL	AMP
Plain and Ordinary Meaning – no construction necessary	“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.”
If construed: “liquid for treating skin”	

Treatment material should be accorded its plain and ordinary meaning. As discussed above, “treatment fluid” and “treatment material” are used interchangeably throughout the System Patents, and the parties have offered the same constructions for each term. Thus, HydraFacial’s arguments regarding “treatment fluid” are also applicable to “treatment material.” *See* Section IV. *C, supra*.

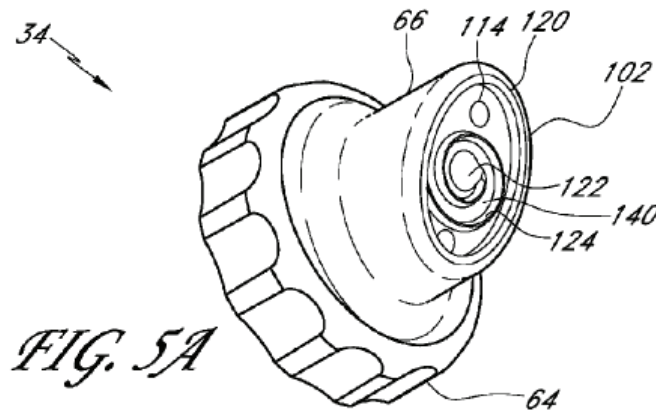
E. “spiral-like” – ’641 Patent, Claims 1, 10, and 15; and ’642 Patent, Claims 1, 8, and 13

HYDRAFACIAL	AMP
Plain and Ordinary Meaning – no construction necessary	indefinite
If construed: “similar to a spiral”	

AMP contends that “spiral-like” is indefinite. A claim is indefinite only when it fails to “inform those skilled in the art about the scope of the invention with reasonable certainty.” *Nautilus, Inc. v. Biosig Instruments, Inc.*, 572 U.S. 898, 910 (2014). “[R]easonable certainty” does not require “absolute or mathematical precision.” *Biosig Instruments, Inc. v. Nautilus, Inc.*, 783 F.3d 1374, 1381 (Fed. Cir. 2015) (quoting *DDR Holdings, LLC v. Hotels.com*, 773 F.3d 1245, 1260-61 (Fed. Cir. 2014)). While claim scope must be clear enough to “apprise the public of what is still open to them,” *Markman v. Westview Instruments, Inc.*, 517 U.S. 370, 373 (1996), “the

definiteness requirement must take into account the inherent limitations of language.” *Nautilus*, 572 U.S. at 909 (internal citations omitted). Thus, “the certainty which the law requires in patents is not greater than is reasonable, having regard to their subject-matter.” *Id.* at 910.

A POSA would easily understand this term and the specification clearly describes examples of a “spiral-like pattern.” Leinsing Decl. at ¶ 47. The specification refers to “spiral-like” inner members in three separate paragraphs and provides figures illustrating examples of a “spiral-like” inner member. *See, e.g.*, ’642 Patent at 9:57–65 (“The spiral-like pattern of the inner members 124 in FIGS. 5 through 7 varies.”), 10:31–42 (describing movement of the handpiece assembly 18 while the “spiral-like inner member 124” engages the patient’s skin), 10:48–57 (describing various functions of the “spiral-like tip 34”). Below is an example of a tip with a spiral-like inner member:



Id. at Fig. 5A. During examination of the application leading to the ’641 Patent, which uses the “spiral-like” claim term, the examiner issued a 35 U.S.C. § 112 indefiniteness rejection, but not for the “spiral-like pattern” term. Exhibit B11. A POSA would understand with reasonable certainty the scope of “spiral-like pattern” in light of the specification’s description and the intrinsic evidence.

F. **“abrade” – ’641 Patent, Claims 1, 10, and 15; and ’642 Patent, Claims 1, 8, and 14**

HYDRAFACIAL	AMP
Plain and Ordinary Meaning – no construction necessary If construed: “to wear away or remove”	“remove the surface of the skin due to mechanical rubbing by a rough or sharp member”

The term “abrade” is straightforward and requires no construction. The specification does not apply a special definition for this term and instead uses it in accordance with its plain and ordinary meaning. If the Court determines that a construction is necessary, this term should be given its plain and ordinary meaning – “to wear away or remove.” “Abrade” is a common term with a well-understood meaning consistent with general dictionary definitions. Leinsing Decl. at ¶¶ 52–54 (citing Exhibit B17). A POSA would understand that the ordinary meaning of “abrade” is “to wear away or remove.” *Id.*

AMP contends that “abrade” should be construed as “remove the surface of the skin due to mechanical rubbing by a rough or sharp member,” but this construction imports unsupported requirements and would be at odds with the specification and claims. The ’642 Patent describes problems with previous skincare systems, explaining that “mechanical rubbing by a handpiece with an abrasive element ... tends to be painful and messy.” ’642 Patent, 1:42–45. Thus, the patent suggests removal of a minimal amount of skin without rough or sharp surfaces. The specification does not require or suggest that the claimed systems *must* remove the skin with a rough or sharp apparatus. A POSA would understand that the term “abrade” itself does not include or suggest a specific form of removal. Leinsing Decl. at ¶ 53. AMP’s attempt to import requirements of a type of removal surface is contrary to the claim language and unsupported by

the specification. Moreover, the specification does not require abrasion by a “rough or sharp” member. *Id.* at ¶ 55.

Indeed, other courts interpreted the term “abrade” in the Asserted Patents consistent with HydraFacial’s proposal. Where patent claims are asserted in multiple patent-infringement suits, the claim terms should be interpreted consistently where possible. *See Markman v. Westview Instr. Inc.*, 517 U.S. 370, 390-91 (1996) (noting that, generally, *stare decisis* should promote uniformity in the claim construction of a given patent). Accordingly, the Court should adopt the plain and ordinary meaning for the term “abrade,” which is consistent with other courts’ orders addressing the same term in at least the ’052 Patent. *See Edge Systems LLC v. Aesthetic Skin Systems LLC*, No. CV 17-4597, Dkt. 79 (C.D. Cal. Jan. 08, 2019) (Exhibit B18) (determining no construction necessary for “abrade”), *Edge Systems LLC v. Ageless Serums LLC*, No. 4-20-cv-04335, Dkt. 84 (S.D. Tex. Feb. 11, 2022) (Exhibit B19) (concluding that “abrade” should be given its plain and ordinary meaning), and *Edge Systems LLC v. Cartessa Aesthetics, LLC*, No. 20-cv-06082, Dkt. 48 (E.D.N.Y. Nov. 29, 2021) (Exhibit B20) (adopting the plain and ordinary meaning for the term “abrade”). None of these courts adopted a construction like AMP’s construction which improperly imports mechanical rubbing and a rough or sharp member.

While one court did determine that “abrade” should not be given its plain and ordinary meaning, *see Edge Systems, LLC v. Venus Concept USA Inc.*, No. 18-62588-CIV, 2019 WL 3936379, at *2 (S.D. Fla. Aug. 20, 2019), that construction is irrelevant because it was related to a different patent (the ’886 patent) which is not related to the Asserted Patents. *SIPCO, LLC v. Emerson Elec. Co.*, 980 F.3d 865, 870 n.2 (Fed. Cir. 2020) (finding claim construction decision in a different case had “no impact” on the present case because the prior case “involved different patents, in entirely different families, with different specifications.”).

Thus, the intrinsic and extrinsic evidence confirm that this term should be given its plain and ordinary meaning which is “to wear away or remove.”

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