

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TENNESSEE
WESTERN DIVISION**

HYDRAFACIAL LLC,

Plaintiff,

v.

Case No. 2:24-cv-02480-JPM-tmp

AESTHETIC MANAGEMENT PARTNERS,
LLC and AESTHETIC MANAGEMENT
PARTNERS INC.,

Defendants.

**MEMORANDUM OF POINTS AND AUTHORITIES IN
SUPPORT OF PLAINTIFF’S MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiff, HydraFacial LLC (“HydraFacial”) submits this Memorandum of Points and Authorities in support of its Motion for a Preliminary Injunction.

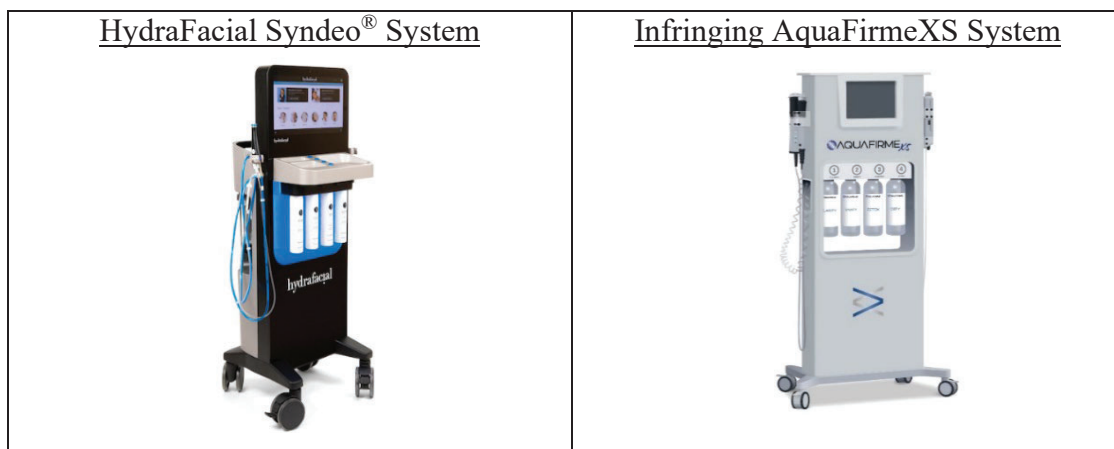
I. INTRODUCTION

HydraFacial is a worldwide leader in the design, development, manufacture, and sale of high-quality skin resurfacing and rejuvenation systems, including hydrodermabrasion systems. These systems clean and exfoliate the skin’s surface, extracting debris from pores, and nourishing the skin with therapeutic moisturizing solutions. Declaration of Vipul Savsani (“Savsani Decl.”) at ¶ 4. HydraFacial markets and sells these systems throughout the United States to users such as dermatologists, plastic surgeons, cosmetic physicians, and estheticians at medical spas. *Id.* at ¶ 5.

HydraFacial’s latest flagship system is its highly successful HydraFacial Syndeo® system. *Id.* at ¶ 3. In addition to the Syndeo® system, HydraFacial has designed, developed, manufactured and sold other patented hydrodermabrasion systems, including the HydraFacial® Tower™, the HydraFacial® Allegro™, and the HydraFacial® Elite™ systems (collectively, the “HydraFacial®

Systems”). *Id.* The HydraFacial® Systems are sold or were previously sold in the United States and practice 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”); 10,357,642 (“the ’642 Patent”) (collectively, “the Asserted Patents”). *Id.* HydraFacial owns each Asserted Patent by assignment.

Defendants Aesthetic Management Partners, LLC and Aesthetic Management Partners Inc. (collectively, “Defendants”) are infringing the asserted patents. *See generally* Declaration of Karl Leinsing (“Leinsing Decl.”) at ¶¶ 59–68. Defendants manufacture, import, and sell the AquaFirmeXS system which is a copycat of the HydraFacial® Systems, as shown in the images below. *Infra* § II.A.



When HydraFacial became aware of Defendants’ infringement, HydraFacial notified Defendants that their AquaFirmeXS system infringes certain claims of the Asserted Patents and demanded that Defendants cease infringing. Savsani Decl. at ¶ 16. Defendants have not stopped their infringement despite this demand. *Id.* at ¶¶ 16–18. HydraFacial did not obtain an AquaFirmeXS device until early 2025 in a separate proceeding against Defendants. Declaration of Christian Boettcher at ¶¶ 4–5. HydraFacial’s receipt and analysis of the physical AquaFirmeXS device further confirmed that the AquaFirmeXS infringes the Asserted Patents. Defendants’ willful infringement has caused and will continue to cause HydraFacial substantial irreparable

harm and is contrary to the overriding public interest in enforcing patent rights. This Court, therefore, should grant HydraFacial's motion and enjoin Defendants' use, importation, and sale of infringing systems, including the AquaFirmeXS system, during this litigation.

II. ARGUMENT

HydraFacial's preliminary injunction motion turns on four factors: (1) likelihood of success on the merits; (2) irreparable harm; (3) the balance of hardships; and (4) the public interest. *Winter v. Natural Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008). Courts "weigh and measure each factor against the other factors and against the form and magnitude of the relief requested." *Hybritech Inc. v. Abbott Lab'ys*, 849 F.2d 1446, 1451 (Fed. Cir. 1988). Applying these factors here results in the propriety of and need for a preliminary injunction. Defendants' AquaFirmeXS system is infringing HydraFacial's patents, and Defendants cannot carry their heavy burden of establishing the patents are invalid. Unless this infringement is enjoined, HydraFacial will continue to suffer irreparable harm, including the loss of market exclusivity and long-term customer relationships. Defendants have no valid countervailing interest in continuing their unlawful infringement, and the public's interest in innovation demands protection of the patents.

A. HydraFacial Is Likely to Succeed on the Merits

To establish a likelihood of success on an infringement claim, the patentee must establish that it is "more likely than not" the defendant is infringing one of the patent claims and that the defendant will not carry its high burden of proving the patents are invalid. *See Revision Mil., Inc. v. Balboa Mfg. Co.*, 700 F.3d 524, 526 (Fed. Cir. 2012) (reversing denial of preliminary injunction for failing to apply the "more likely than not standard"); *Metalcraft of Mayville, Inc. v. The Toro Co.*, 848 F.3d 1358, 1364-68 (Fed. Cir. 2017) (holding patentee need only establish one patent claim was infringed and likely to withstand a validity challenge). As established below,

HydraFacial is likely to carry this burden as Defendants' AquaFirmeXS system infringes at least Claim 1 of the '052 Patent and Claim 22 of the '287 Patent (collectively, the "PI Claims").

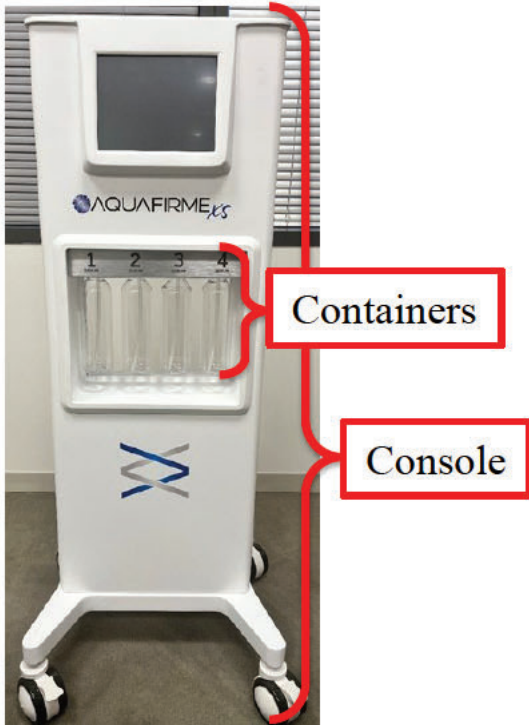
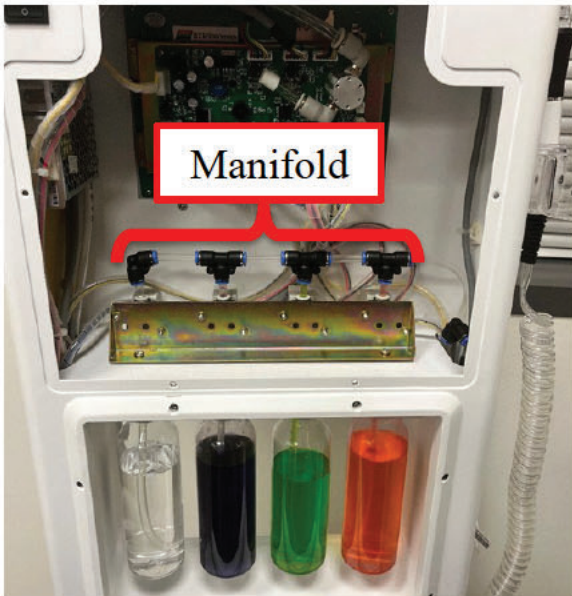
1. HydraFacial Is Likely to Prove Patent Infringement at Trial

"The essential inquiry" in establishing patent infringement "is whether 'the accused product or process contain[s] elements identical or equivalent to each claimed element of the patented invention.'" *Pozen Inc. v. Par Pharm., Inc.*, 696 F.3d 1151, 1167 (Fed. Cir. 2012) (quoting *Warner-Jenkinson Co. v. Hilton Davis Chem. Co.*, 520 U.S. 17, 40 (1997)). Infringement under the doctrine of equivalents is met by demonstrating by a preponderance of the evidence "on a limitation-by-limitation basis that the accused product performs substantially the same function in substantially the same way with substantially the same result as each claim limitation of the patented product." *Id.*

"Determining whether a claim has been infringed requires a two-step analysis." *PC Connector Sols. LLC v. SmartDisk Corp.*, 406 F.3d 1359, 1362 (Fed. Cir. 2005). Courts first construe the patent claim as a matter of law "to determine its scope and meaning," interpreting the terms in accordance with their "ordinary and accustomed meaning" as of the claim's "effective filing date" unless the specification or file history show the inventor used them differently. *Id.* at 1362–63. "Second, the claim as properly construed must be compared to the accused device or process." *Id.*

Karl Leinsing, a medical device engineer with decades of experience in designing, manufacturing, and testing medical devices and inventor on 41 medical device patents, examined the AquaFirmeXS system in view of the '052 and '287 Patents and the PI Claims to prepare the concurrently filed declaration. *See generally* Leinsing Decl. In his declaration, Mr. Leinsing explains how HydraFacial revolutionized the skin rejuvenation industry with its

hydrodermabrasion technology, and how the AquaFirmeXS infringes on the PI Claims on a limitation-by-limitation basis. *Id.* at ¶¶ 59–68; *see also* Savsani Decl. at ¶ 3. His analysis for the '052 and '287 Patents is summarized in the following charts showing how the AquaFirmeXS meets each limitation of PI Claims.

CLAIM 1 OF THE '052 PATENT, (Leinsing Decl. at ¶ 65)	
1[pre]: A system for performing a skin treatment procedure, the system comprising:	
To the extent that the preamble is a limitation, the AquaFirmeXS is a system for performing a skin treatment procedure.	
AMP markets the AquaFirmeXS as a “facial treatment...ideal for treating poorly hydrated & undernourished skin.” Dkt. 1-14 at 2. Spas using the AquaFirmeXS have marketed the AquaFirmeXS as “cleans[ing], exfoliat[ing], uplift[ing], and hydrat[ing] the skin.” Dkt. 1-20 at 3 (describing vacuum suction for EVO handpiece); <i>see also</i> Dkt. 1-10 at 10.	
[a][i]: a console including a manifold,	
AquaFirmeXS has a console including a manifold. As shown in the images below, the AquaFirmeXS comprises a console that includes a manifold inside.	
 Exhibit C-16	 Exhibit C-22
[a][ii] the manifold being in fluid communication with a first fluid container and at least a second fluid container,	
The manifold of the AquaFirmeXS is in fluid communication with a first fluid container and at least a second fluid container. Tubing from the manifold descends into the fluid containers and provides fluid communication with the containers, including the first fluid container and at least one additional fluid container, as shown in the below images.	

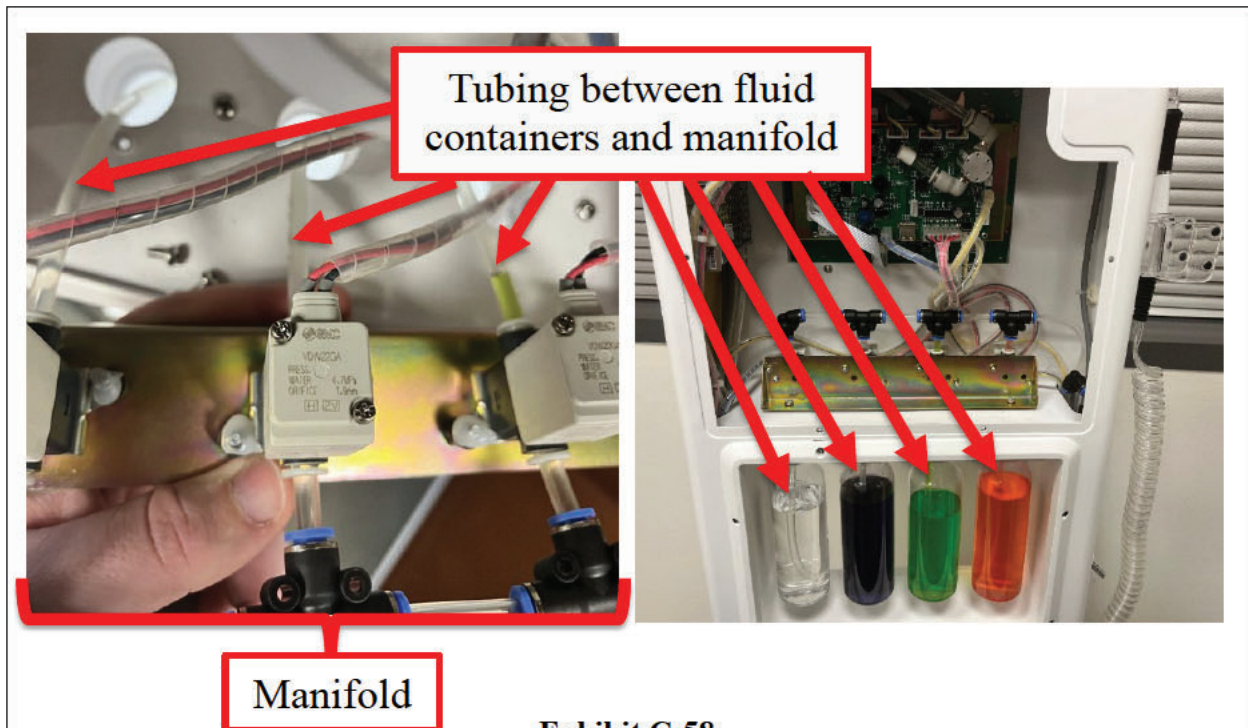


Exhibit C-58

[a][iii] the first fluid container and the at least the second fluid container being configured to contain a treatment material for a skin treatment procedure, wherein the treatment material comprises a liquid;

The first fluid container and the at least the second fluid container of the AquaFirmeXS are configured to contain a treatment material for a skin treatment procedure, and the treatment material is a liquid. Defendants advertise the AquaFirmeXS system as “utilizing our proprietary serums” to “cleanse, exfoliate, hydrate, and nourish the skin” when passed through the system’s handpiece. **Dkt. 1-9** at 2; *see also* **Dkt. 1-10** at 13; **Dkt. 1-11** at 2. The AquaFirmeXS uses treatment solutions which are liquid treatment materials. *See* limitation 1[a][i], *supra* (showing the containers with liquid treatment materials).

[b] a handpiece assembly comprising a tip, the tip being configured to contact a skin surface of a subject;

The AquaFirmeXS includes a handpiece assembly comprising a tip, and the tip is configured to contact a skin surface of a subject. The image below shows the handpiece assembly with its tip.



Dkt. 1-21 at 2

[c] a supply conduit placing the manifold of the console in fluid communication with the handpiece assembly, wherein a distal end of the supply conduit is configured to couple to the handpiece assembly;

The AquaFirmeXS has a supply conduit that places the manifold in fluid communication with the handpiece assembly, as shown in the images below (fluid communication path through the supply conduit shown in blue):

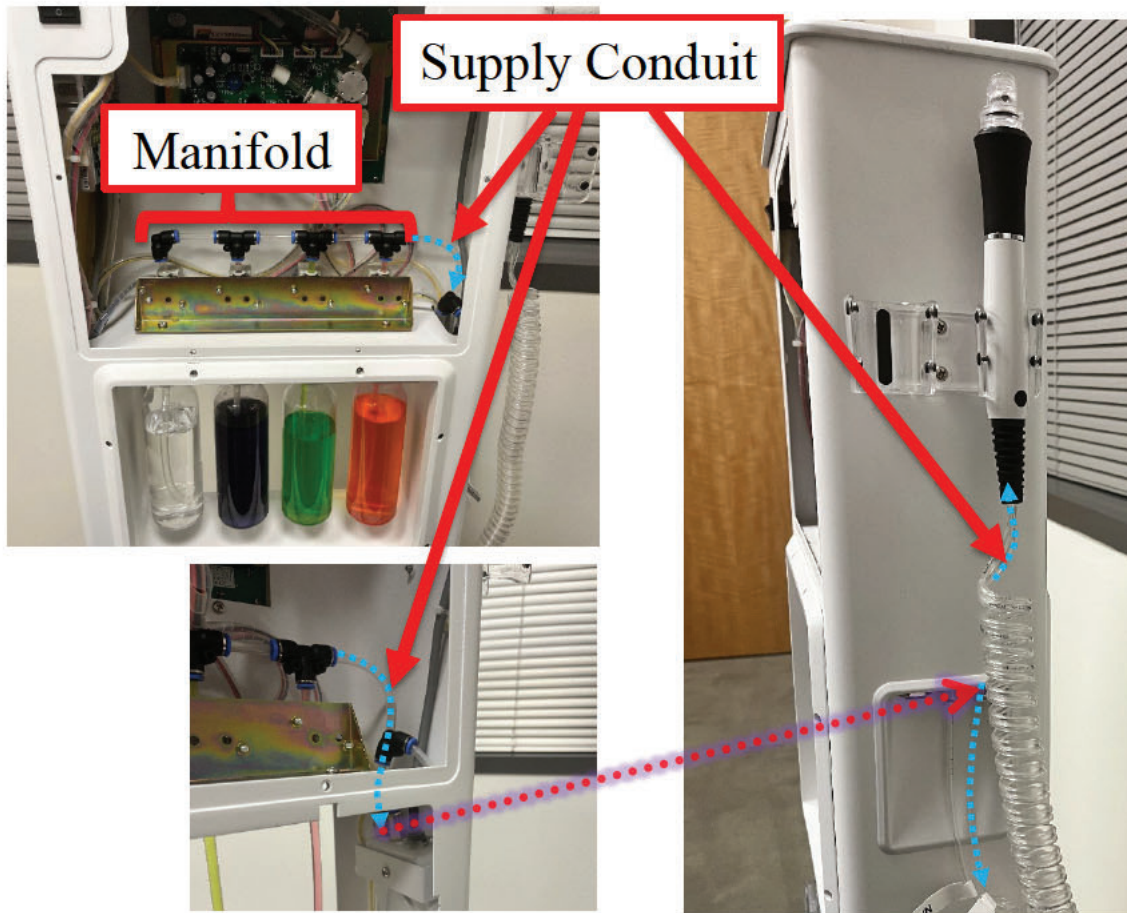


Exhibit C-22, Exhibit C-42, Exhibit C-32.

[d] wherein the manifold is configured to control a flow of treatment material from the first fluid container and at least the second fluid container through the supply conduit;

The AquaFirmeXS manifold is configured to control a flow of treatment material from the first fluid container and at least the second fluid container through the supply conduit. *See also* limitations 1[a]i, 1[a]ii, and 1[g], *infra* (showing the fluid communication and ability to select different treatment materials from different fluid containers, as controlled by the manifold).

[e] a vacuum source;

The AquaFirmeXS comprises a vacuum source. The images below show the vacuum source in the AquaFirmeXS.

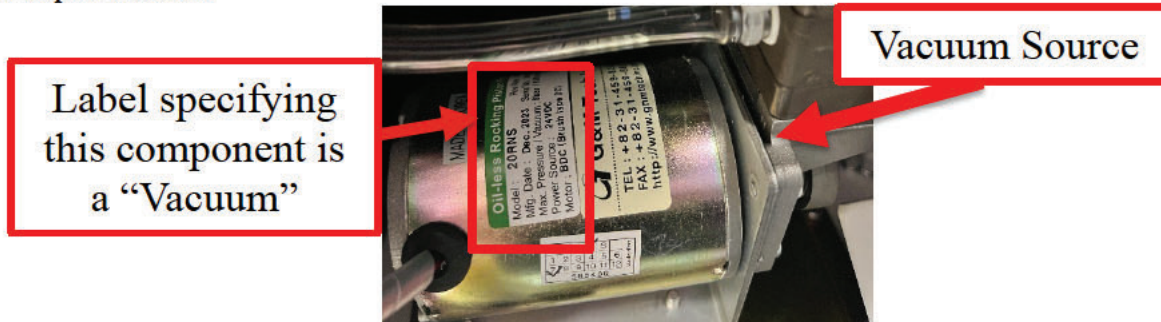
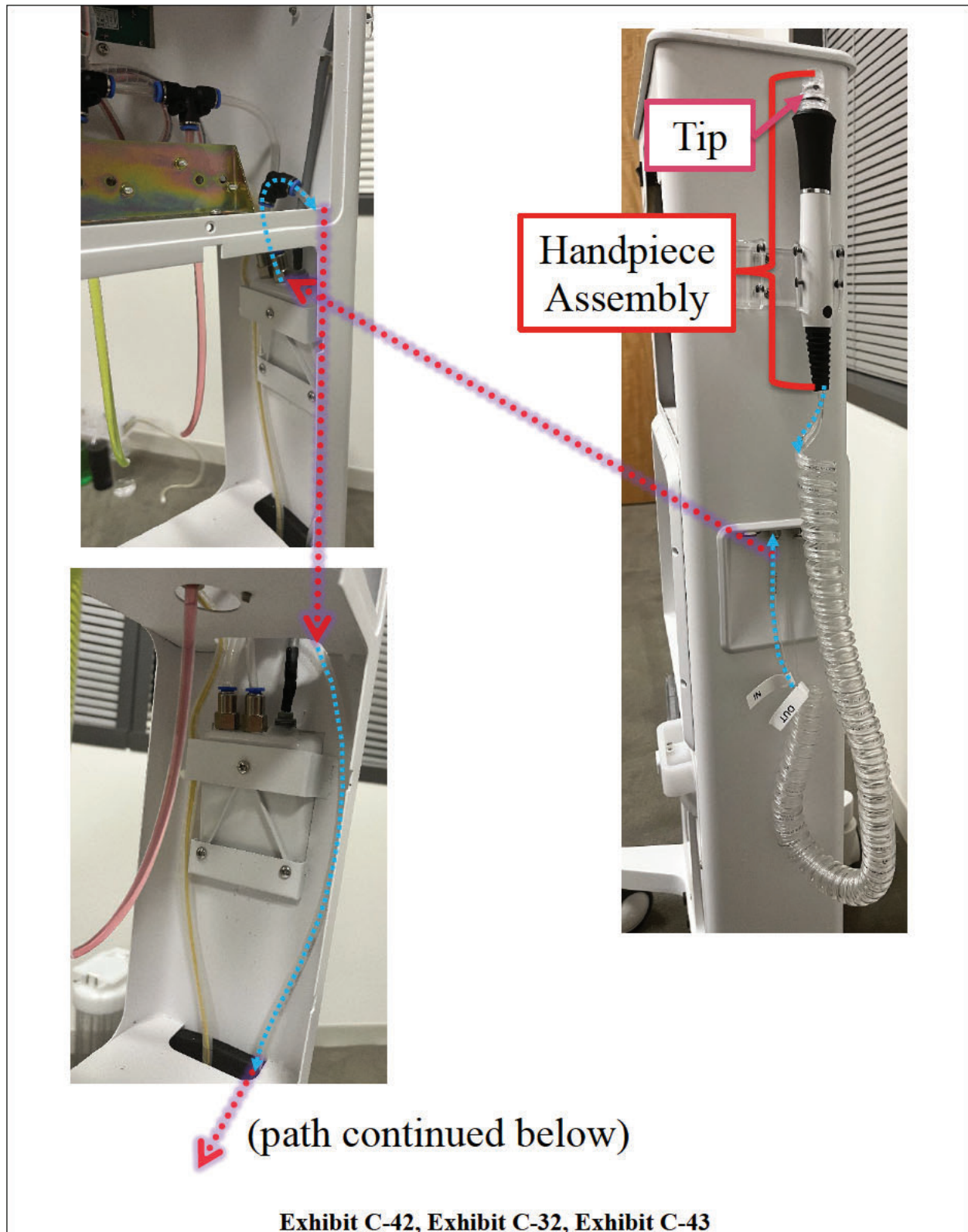


Exhibit C-59

[f] a waste conduit in fluid communication with the tip of the handpiece assembly to remove waste away from a skin surface of a subject during a skin treatment procedure, wherein the waste conduit is operatively coupled to the vacuum source; and

As shown in the photos below, the AquaFirmeXS system has a waste conduit in fluid communication with the tip of the handpiece assembly to remove waste during a skin treatment procedure. The waste conduit can include any of the conduits defined by the following or the combination of them all: (1) the tubing from the handpiece assembly to the port on the console for the handpiece assembly, (2) the tubing from the port for the handpiece to the waste container, (3) the tubing from the waste container to the air intake, and (4) the tubing from the air intake to the vacuum source. The images below show the fluid communication pathway of the waste conduit via light blue arrows.



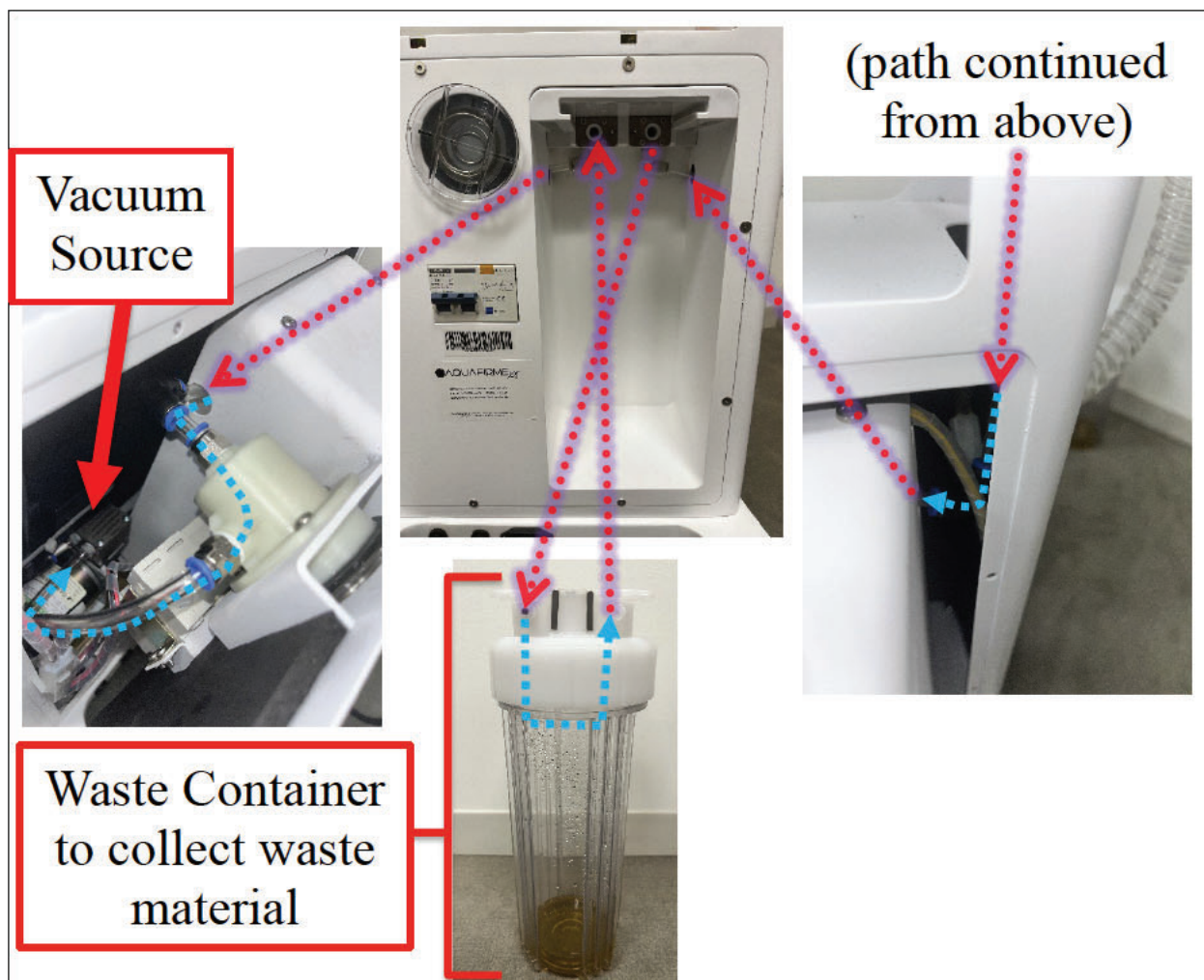


Exhibit C-46, Exhibit C-33, Exhibit C-45, Exhibit C-35.

[g] wherein the system is configured to permit a user to select the treatment material from the first fluid container or the at least second fluid container to be delivered through the supply conduit to the handpiece assembly; and

The AquaFireXS is configured to permit a user to select the treatment material from the first fluid container or the second fluid container to be delivered through the supply conduit to the handpiece assembly. Mr. Leinsing observed that a user can select one of four containers (three of which contain treatment material) for delivery of its contained treatment material through the supply conduit to the handpiece assembly. *See* Exhibit C-2, C-3 (showing a user selecting the first fluid container and the at least second fluid container, and thus their contents, for delivery through the supply conduit to the handpiece assembly).

Selection of the first fluid container
(Exhibit C-2 at 0:04)

Selection of at least the second fluid
container (Exhibit C-2 at 1:11)



[h] wherein, when the vacuum source is activated and the tip contacts the skin surface, a suction force is created within the waste conduit and along the tip, thereby removing waste from the skin surface via the waste conduit while drawing treatment material from the first fluid container or the second fluid container to the tip via the supply conduit.

When the AquaFirmeXS's vacuum source is activated and the hydrodermabrasion tip contacts the skin surface, a suction force is created within the waste conduit and along the tip, thereby removing waste from the skin surface via the waste conduit while drawing treatment material from the first fluid container or the second fluid container to the tip via the supply conduit. Leinsing Decl. at ¶¶ 48-52. HydraFacial's expert observed that the tip of the handpiece is configured to contact a skin surface of a subject during a skin treatment procedure to deliver a suction force to vacuum away debris while drawing and delivering the treatment solutions from the containers coupled to the manifold. **Exhibits C-2, C-3; see also** limitation 1[f], *supra* (showing the suction force path).

CLAIM 22 OF THE '287 PATENT (Leinsing Decl. at ¶ 68)

22[pre]: A system for treating skin, the system comprising:

To the extent that the preamble is deemed to be a limitation, the AquaFirmeXS is a system for treating skin. *See* limitation 1[pre], *supra*.

[a] a console configured to receive a first container and at least one additional container;

The AquaFirmeXS has a console configured to receive a first container and at least one additional container. *See* limitation 1[a], *supra*.

[b] a collection lumen configured 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; and

The AquaFirmeXS includes a collection lumen in the console configured to be in fluid communication with the containers when the containers are connected to the console. The

below images show the collection lumen which extends within the tubes and connectors. Vertical tubing extends from the collection lumen into the containers with valves on each respective line as shown below. This tubing places the collection lumen in a state where the passage of fluid is possible between the containers and the collection lumen. As shown further below, the collection lumen is where fluid from each container passes before it is delivered to the handpiece for a skin treatment.

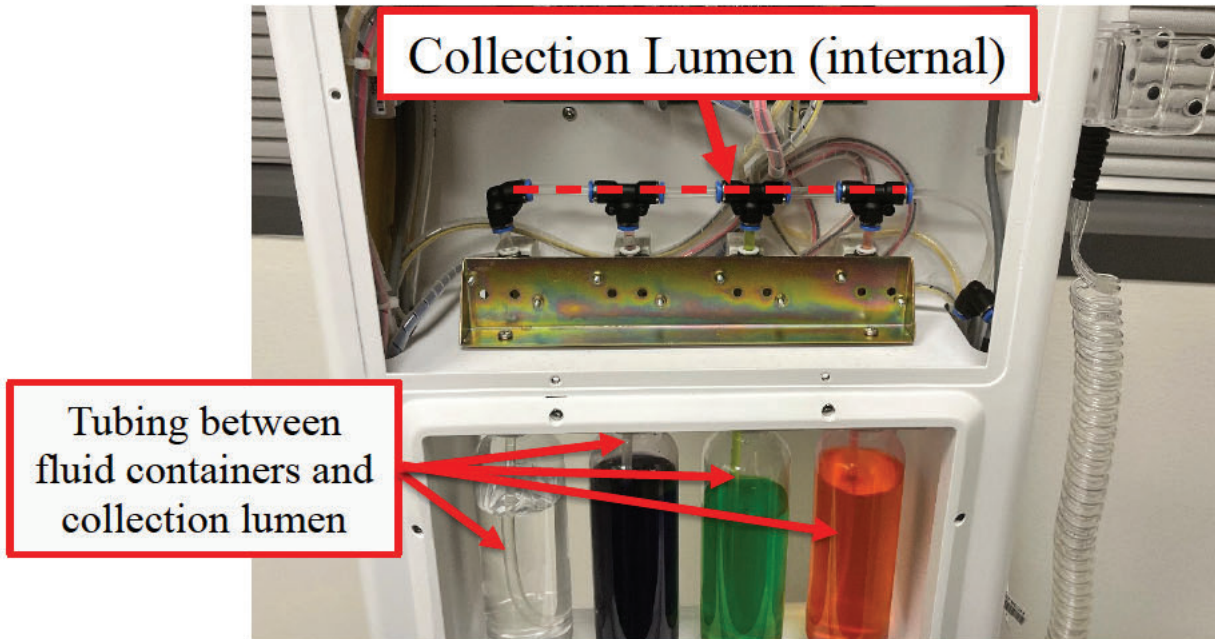


Exhibit C-22

[c] a handpiece having a working end, the working end of the handpiece being configured to contact skin tissue of a subject during use;

The AquaFirmeXS has a handpiece with a working end, the working end of the handpiece configured to contact a patient's skin surface to perform the hydrodermabrasion treatment. *See* limitation 1[b], *supra*; *see also* **Dkt. 1-10** at 10 ("The EVO cosmetic treatment tip has been specially designed to allow for optimum cleaning and exfoliation of the skin, it also enables the nutrient-rich AquaFirme Solutions to be absorbed by the skin.").

[d][i] wherein the working end of the handpiece is configured to be placed in fluid communication with a vacuum source to create a suction force along a distal end of the handpiece when the vacuum source is activated and the handpiece is connected to the console and

The working end of the handpiece is configured to be in fluid communication with the vacuum source to create a suction force along the distal end of the handpiece as shown in the figures below. *See* limitations 1[f] and 22[c], *supra*.

As further shown above, the AquaFirmeXS includes a vacuum source. *See* limitation 1[e], *supra*. The AquaFirmeXS AquaFirmeXS uses "vacuum suction, spiral eddy movements and specially formulated solutions to cleanse, exfoliate, uplift and hydrate the skin." **Dkt. 1-14** at 2; *see also* **Dkt. 1-20**, **Dkt. 1-10** at 10 (describing vacuum suction in the systems).

[d][ii] wherein the working end of the handpiece is configured to be placed in fluid communication with the first container or the at least one additional container through the collection lumen; and
The working end of the handpiece is configured to be placed in fluid communication with the fluid containers through the collection lumen, as shown in the images below. <i>See</i> limitations 1[a][ii], 1[c] and 22[b], <i>supra</i> . The collection lumen is within the manifold. The supply conduit is configured to couple to the handpiece assembly, as shown above. <i>Id.</i>
[e] a supply conduit that places the collection lumen in fluid communication with the working end of the handpiece when the handpiece is connected to the console;
A supply conduit places the collection lumen in fluid communication with the working end of the handpiece, as shown below. <i>See</i> limitations 1[c] and 22[d][ii] <i>supra</i> .
[f][i] wherein each of the first container and the at least one additional container includes treatment materials, and
Defendants advertise the AquaFirmeXS system as “utilizing our proprietary serums” to “cleanse, exfoliate, hydrate, and nourish the skin” through the system’s handpiece’s cosmetic tip. Dkt. 1-9 at 2; <i>see also</i> Dkt. 1-10 at 13; Dkt. 1-11 at 2. Because the AquaFirmeXS uses “proprietary serums,” i.e. treatment solutions delivered to the skin, the first fluid container and the at least the second fluid container are configured to contain a liquid treatment material. <i>See</i> limitation 22[a], <i>supra</i> (showing the first fluid container and the at least the second fluid container on the console being configured to contain a liquid treatment material).
[f][ii] wherein treatment materials from the first container and the at least one additional container are configured to be delivered to the supply conduit sequentially when the first container and the at least one additional container are connected to the console.
As shown in the photos below, the AquaFirmeXS has an input device that permits a user to select the treatment material from the first fluid container or the second fluid container to be delivered through the supply conduit to the handpiece assembly sequentially. This occurs when a user selects a container for treatment via the container selection icons, as shown in the images below. <i>See</i> Dkt. 1-24 (displaying container selection icons); limitation 1[g] <i>supra</i> .

See also Leinsing Decl. at ¶¶ 65 and 68 (including detailed charts showing how the AquaFirmeXS infringes the PI Claims). These charts and Mr. Leinsing’s declaration demonstrate that each limitation of the PI Claims is present in the AquaFirmeXS system. HydraFacial, therefore, is likely to prevail on the merits, unless Defendants can establish the patents are invalid, which they cannot.

2. HydraFacial Is Likely to Prevail on Patent Validity at Trial.

“[A]n issued patent comes with a statutory presumption of validity under 35 U.S.C. § 282.” *Titan Tire Corp. v. Case New Holland, Inc.*, 566 F.3d 1372, 1376 (Fed. Cir. 2009). To overcome this presumption, the infringer must “prove invalidity by clear and convincing evidence,” and at

the preliminary injunction stage, the defendant must come forward with evidence, which the patentee has the opportunity to rebut. *Id.* at 1376–77.

Defendants will likely argue that prior art references anticipate or render obvious the '052 and '287 Patents. IPRs have been filed on some of the Asserted Patents, including the '052 and '287 Patents. A third party filed an IPR on the '287 Patent which was denied institution, but Defendants filed a copycat IPR petition which was the only IPR to be instituted. This does not defeat likelihood of success on the merits. As explained by Mr. Leinsing, the IPR prior art lacks limitations of the asserted claims. Leinsing Decl. at ¶¶ 75-89. Courts have granted and upheld preliminary injunctions despite the PTAB instituting an IPR or even invalidating claims asserted in the underlying motion. *Tinnus Enters., LLC v. Telebrands Corp.*, 846 F.3d 1190, 1202 n.7 (Fed. Cir. 2017); *Liqwd, Inc. v. L'Oreal USA, Inc.*, 2019 WL 1873281, at *4 (D. Del. Apr. 26, 2019). HydraFacial will file a request for director review of that '287 institution decision next week and expects the decision to be reversed because the PTAB did not consider HydraFacial's validity and discretionary denial arguments. The same third party also filed an IPR on the '052 Patent, but it has not been instituted and is subject to a request for discretionary denial. The mere filing of an IPR does not support an inference of merit to the validity challenge. *See 3Shape A/S v. Carestream Dental, LLC*, No. 1:22-CV-01829-WMR, 2023 WL 2068050, at *1 (N.D. Ga. Jan. 5, 2023). Defendants' invalidity arguments are meritless and clearly rely on deficient prior art references and hindsight. *Millennium Pharms., Inc. v. Sandoz Inc.*, 862 F.3d 1356, 1367 (Fed. Cir. 2017). HydraFacial pioneered hydrodermabrasion, innovating away from microdermabrasion and other skin treatments that the references teach, utilizing inventions of the '052 and '287 Patents. *See* Leinsing Decl. at ¶¶ 75–89; *see also* Savsani Decl. at ¶ 3; *infra* fn. 2. Indeed, the HydraFacial®

Systems are frequently copied and commercially successful, especially compared to HydraFacial's single-container hydrodermabrasion system. Leinsing Decl. at ¶¶ 91–125; Savsani Decl. at ¶ 3.

A review of the prior art set forth in AMP's '287 Patent IPR petition confirms that the claims of the '052 Patent and '287 Patent will survive anticipation and obviousness challenges. Leinsing Decl. at ¶¶ 75-89. For example, none of the prior art references cited by Defendant or the IPR petitions teach “a console including a manifold, the manifold being in fluid communication with a first fluid container and at least a second fluid container, the first fluid container and the at least the second fluid container being configured to contain a treatment material for a skin treatment procedure, wherein the treatment material comprises a liquid;” (claim 1 of the '052 Patent). *Id.* at ¶¶ 75-80. As another example, none of the cited reference teach “a collection lumen configured 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” (claim 22 of the '287 Patent). *Id.* ¶¶ 85-88. Moreover, the cited references do not render the PI Claims obvious. *Id.* ¶¶ 75-126. One district court has already granted summary judgment of validity regarding the '052 Patent. *See Edge Systems LLC v. Cartessa Aesthetics, LLC*, Case No. 2:20-cv-06082, Dkt. 97 (E.D.N.Y. June 6, 2023) at 10 (“Edge’s motion for summary judgment on the question of invalidity is GRANTED....”).

Defendants’ misplaced prosecution laches theory will also fail. As an initial matter, there is no assertion that this defense applies to the '052 Patent. Prosecution laches is rooted in curbing abusive prosecution practices that led to an unwarranted extension of the patent term for so-called “submarine patents.” *Hyatt v. Hirshfeld*, 998 F.3d 1347, 1351–53 (Fed. Cir. 2021) (describing submarine patents under previous patent term scheme). Under the current scheme for evaluating

patent term,¹ delay in prosecuting a patent typically has no impact on patent term, thus reducing potential prejudice to accused infringers. *Cancer Rsch. Tech. Ltd. v. Barr Lab'ys., Inc.*, 625 F.3d 724, 732 (Fed. Cir. 2010) (noting the previous patent scheme and that “the facts of this case are not likely to be frequently repeated, as patent terms are now measured from effective filing date.”).

Even for the '287 Patent, this defense fails. Defendant's prosecution laches defense rests on a single, unreported district court case—currently on appeal—that is easily distinguished from the facts of this case. *See Google LLC v. Sonos, Inc.*, 2023 WL 6542320, at *19 (N.D. Cal. Oct. 6, 2023); *Google LLC v. Sonos, Inc.*, C.A. Docket No. 2024-1097 (appeal). HydraFacial is not aware of any other cases finding prosecution laches for a patent under the current patent term scheme. *See* C.A. Docket No. 2024-1097, D.I. 44 at 11. Moreover, *Sonos* involved a complex fact pattern inapplicable here, including the patentee adding new matter to the continuation application and affirmatively misrepresenting that no such addition occurred. *See Sonos*, 2023 WL 6542320, at *19. Defendant cannot show that the facts relied on in *Sonos* are present here, much less the facts necessary for showing prosecution laches, are met for the '287 Patent.

B. HydraFacial Is Likely to Suffer Irreparable Harm if Defendants' Infringement of Patent '052 is not Enjoined.

“[C]ompetition between the patentee and the infringer, particularly direct competition, strongly militates toward a finding of irreparable harm.” *Apple Inc. v. Samsung Elecs. Co.*, 809 F.3d 633, 653 (Fed. Cir. 2015) (Reyna, J., concurring); *see also Douglas Dynamics, LLC v. Buyers Prods. Co.*, 717 F.3d 1336, 1345 (Fed. Cir. 2013) (“Where two companies are in competition against one another, the patentee suffers the harm—often irreparable—of being forced to compete

¹ Both the '052 Patent and '287 Patent fall under the current scheme for measuring a utility patent's term, which is “20 years from the date on which the application for the patent was filed.” 35 U.S.C. § 154(b). The previous scheme provided a patent term of 17 years from the date the patent was granted. *See Hyatt*, 998 F.3d at 1351.

against products that incorporate and infringe its own patented inventions.”). Defendants and HydraFacial directly compete for the same customers in the hydrodermabrasion market. *See* Savsani Decl. at ¶ 15; Dkt. 1-17; Dkt. 1 at ¶¶ 26–27. And Defendants’ continued infringement will cause HydraFacial various forms of significant irreparable harm.

1. Defendants’ Infringement Will Damage HydraFacial’s Reputation.

Absent an injunction, Defendants’ infringement will irreparably harm HydraFacial’s reputation. *Douglas Dynamics*, 717 F.3d at 1344–45. HydraFacial is recognized as the “pioneer of hydrodermabrasion” whose devices employ patented innovations to provide superior skin treatments.² This reputation as an innovator “will certainly be damaged if customers found the same ‘innovations’ appearing in competitors’ [hydrodermabrasion devices].” *Douglas Dynamics*, 717 F.3d at 1345. If left unchecked during this litigation, Defendants’ infringement will also damage HydraFacial’s reputation among its dealers and distributors, who rely on HydraFacial’s commitment to enforcing “its intellectual property rights.” *Id.* HydraFacial purposely never has licensed and has aggressively sought to enforce its patents to “maintain market exclusivity,” filing several lawsuits and ITC proceedings against infringers. *See* Savsani Decl. at ¶¶ 13–14. This is “an intangible asset that is part of a company’s reputation” that will be irreparably damaged unless the infringement is enjoined. *Douglas Dynamics*, 717 F.3d at 1345.

2. Defendants’ Infringement Will Cause HydraFacial to Lose Customers.

Defendants’ infringement will also cause HydraFacial to lose critical customer relationships. *See Robert Bosch LLC v. Pylon Mfg. Corp.*, 659 F.3d 1142, 1153–54 (Fed. Cir.

² *See, e.g.*, Becki Murray, *Hydrafacial*, THE TWEAKMENTS GUIDE (Oct. 24, 2024), <https://thetweakmentsguide.com/brands/hydrafacial/>; *Does a HydraFacial Really Work?*, BAYOU CITY DERMATOLOGY, <https://www.bayoucitydermatology.com/post/does-a-hydrafacial-really-work/>; Leisure Media, *Hydrafacial*, SPA BUSINESS, <https://www.spabusiness.com/company-profiles/The-HydraFacial-Company/1499#:~:text=Hydrafacial%2C%20flagship%20brand%20of%20The,and%20a%20boost%20of%20confidence.>

2011) (holding loss of business opportunities and potential customers constitutes irreparable harm). Such harm is likely irreparable where, as here, the patented technology fosters significant reliance. *See Natera, Inc. v. NeoGenomics Lab'ys, Inc.*, 106 F.4th 1369, 1379 (Fed. Cir. 2024) (confirming irreparable harm where patients who began using the alleged infringer's products were unlikely to switch to the patentee's product because the requirement of continuity of care made it impractical, finding "[t]he potential harm to [patentee] includes not only a quantifiable number of current lost sales, but also lost repeat business from patients tied to a single testing methodology"); *Illumina, Inc. v. Qiagen, N.V.*, 207 F. Supp. 3d 1081, 1093 (N.D. Cal. 2016) (finding irreparable harm in loss of potential customers for DNA sequencing technology "inasmuch as laboratories purchase new DNA-sequencing equipment infrequently and irregularly").

The '052 and '287 Patents cover the primary functionality (hydrodermabrasion) of the HydraFacial® Systems. Savsani Decl. at ¶¶ 3–4. This functionality drives customer demand for the systems, which customers purchase much less frequently than the corresponding consumables. *Id.* at ¶ 9. There are no non-infringing substitutes on the market for the HydraFacial® Systems or AquaFirmeXS system. *See id.* at ¶ 13. And HydraFacial possesses the resources necessary to meet demands being served by any and all infringing devices, including the AquaFirmeXS system. *See id.* at ¶ 20. Each infringing sale, therefore, deprives HydraFacial of a customer. *Apple*, 809 F.3d at 644 (irreparable harm established where patentee demonstrates a competitor is infringing on a patented design that motivates customer purchasing); *Kaufman Co. v. Lantech, Inc.*, 926 F.2d 1136, 1141 (Fed. Cir. 1991) (where there is demand, patentee capacity to meet that demand, and a lack of non-infringing substitutes, it may be inferred that the patentee would have made the sale but for the infringement). This loss is felt for many years, given that hydrodermabrasion devices have long lifespans and require substantial commercial investment and employee training. *See*

Savsani Decl. at ¶ 6. Customers frequently purchase substantial quantities of replacement parts, including consumable tips and treatment solutions,³ providing an opportunity to deepen the customer relationship. *See id.* at ¶ 8. These customers, having invested in and having become dependent on the infringing technology, are unlikely to switch to a HydraFacial Syndeo® system after HydraFacial prevails in this litigation and its patents expire. *Natera*, 106 F.4th at 1379. Defendants’ continued infringement, therefore, likely will cause substantial entrenchment and produce ripple effects that deprive HydraFacial of business opportunities and customers, which are intangible assets that are difficult, if not impossible, to quantify in terms of monetary damages.

C. The Balance of Hardships Favors Granting this Motion.

Where a valid patent has been infringed, the balance typically favors the patent owner. *See Abbott Lab’ys v. Sandoz, Inc.*, 544 F.3d 1341, 1362 (Fed. Cir. 2008) (“[T]he added erosion of [the patentee’s] markets, customers, and prices, is rarely reversible.”). Sales of HydraFacial® Systems are critical to HydraFacial’s economic success, comprising a significant portion of the companies’ revenues. Savsani Decl. at ¶ 10. Their importance to HydraFacial far outweighs Defendants’ interest in continuing to infringe on HydraFacial’s patents. *See Anderson v. TOL, Inc.*, 927 F. Supp. 2d 475, 488 (M.D. Tenn. 2013) (“courts typically find that,” the infringer’s self-inflicted harm “is a natural consequence of infringing activity that does not weigh against issuance of an injunction”) (collecting cases); *Windsurfing Int’l, Inc. v. AMF, Inc.*, 782 F.2d 995, 1003 n. 12 (Fed. Cir. 1986) (“One who elects to build a business on a product found to infringe cannot be heard to complain if an injunction against continuing infringement destroys the business so elected.”). Moreover, Defendants sell multiple skin restoration and resurfacing products, which are found on

³ An expert for HydraFacial estimated in connection with a previous litigation that, in 2021, HydraFacial generated █████ per month in profit of consumables, including tips and serums, for each sale of a HydraFacial® System. Savsani Decl. at ¶ 11.

its website that do not infringe HydraFacial's patents. *See Advanced Biotherapy Treatments for Skin and Hair*, AESTHETIC MANAGEMENT PARTNERS, <https://aestheticmanagementpartners.com/#> (listing devices under "Technology" tab). The balance of hardships thus weighs in favor of granting the motion.

D. Public Interest Favors an Injunction.

The presumption is that "the public is best served by enforcing patents that are likely valid and infringed." *Abbott Lab'ys v. Andrx Pharms., Inc.*, 452 F.3d 1331, 1348 (Fed. Cir. 2006); *WCM Indus., Inc. v. IPS Corp.*, 2016 WL 7448709, at *4 (W.D. Tenn. May 16, 2016) ("There is a 'strong public policy favoring the enforcement of patent rights.'") (cleaned up). To overcome this presumption, Defendants need to demonstrate that there is "some critical public interest that would be injured by the grant of preliminary relief." *Lambton Mfg. Ltd. v. Young*, 833 F. Supp. 610, 617 (W.D. Ky. 1993). No such interest exists here. Defendants have no defensible interest in selling their infringing products. *PHG Techs., LLC v. TimeMed Labeling Sys., Inc.*, 2006 WL 2670967, at *20 (M.D. Tenn. Sept. 18, 2006); *BlephEx, LLC v. Myco Indus., Inc.*, 2020 WL 5951504, at *8 (E.D. Mich. Oct. 8, 2020), *aff'd*, 24 F.4th 1391 (Fed. Cir. 2022). This is not a situation in which an injunction will lead to a critical shortage in "products necessary for some important health or welfare need[.]" *Spansion, Inc. v. Int'l Trade Comm'n*, 629 F.3d 1331, 1360 (Fed. Cir. 2010). The HydraFacial® Systems are cosmetic devices, and HydraFacial can meet the market demand. The public interest factor, therefore, weighs in favor of enjoining Defendants' infringement.

III. CONCLUSION

For the foregoing reasons, HydraFacial respectfully requests that the Court enter a preliminary injunction to bar Defendants from the manufacture, import and sale of the AquaFirmeXS system, until such a time as this matter can be tried.

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Respectfully submitted,

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