

Filed September 17, 2025

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

AESTHETIC MANAGEMENT PARTNERS, LLC AND
AESTHETIC MANAGEMENT PARTNERS, INC.,

Petitioner,

v.

HYDRAFACIAL LLC,

Patent Owner.

Case No. IPR2025-01217
U.S. Patent No. 11,446,477

**PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL OF INSTITUTION**

TABLE OF CONTENTS

Page No.

I.	INTRODUCTION	1
II.	THE WORKLOAD AND PRIOR FINDINGS MEMOS CONFIRM THIS CASE WARRANTS DISCRETIONARY DENIAL OF AMP’S PETITION	3
A.	AMP’s Eleventh-Hour Copycat Petition Epitomizes Delay and Gamesmanship that Undermine Settled Expectations	3
B.	Prior Adjudications Upholding Family Patents and Rejecting AMP’s Prior Art Confirm the Petition Is Meritless	5
1.	The District Court Already Upheld the Validity of the '052 Patent in <i>Cartessa EDNY</i>	6
2.	The ITC Already Determined that Karasiuk, Palmer, and Trueba Do Not Render the '287 Patent Invalid	7
3.	The ITC Already Determined that Greenberg’s Dry- Particle System Cannot Satisfy the Treatment Material Limitations or Be Combined Across Embodiments	9
4.	The ITC Also Found HydraFacial’s Commercial Success to Be Independent Evidence of Nonobviousness	11
C.	HydraFacial Made Significant Investment in Developing Products that Practice the '477 Patent Claims	13
D.	Testimony from AMP’s Expert’s Witness Confirms the Petition Is Meritless.....	13

TABLE OF CONTENTS
(cont'd)

	Page No.
III. THE FINTIV FACTORS CONFIRM THIS CASE WARRANTS DISCRETIONARY DENIAL OF AMP’S PETITION.....	14
A. Factor 1 favors discretionary denial because a stay is highly unlikely	14
B. Factor 2 favors discretionary denial because the judge will schedule trial as soon as permitted by the Patent Local Rules	15
C. Factor 3 favors denial of institution because the district court and parties have made substantial investments in the district court litigation	16
D. Factor 4 strongly favors denial of institution because there is substantial overlap between this IPR and the parallel litigations	18
E. Factor 5 favors denial of institution because the petitioner in this IPR and the defendant in the pending litigation are the same party—AMP—and AMP rehashes Cartessa’s positions from the concluded <i>Cartessa ITC</i>	19
F. Factor 6 strongly favors denial of institution because the Petition lacks merit and is outweighed by the principles of efficiency and economy	20
IV. CONCLUSION.....	20

TABLE OF AUTHORITIES

Page No.

Cases

<i>Amgen Inc. v. Bristol-Myers Squibb Co.</i> , IPR2025-00601, Paper 9 (PTAB July 24, 2025)	13
<i>Apple Inc. v. Fintiv, Inc.</i> , IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020)	<i>passim</i>
<i>Fitbit Inc. v. Philips North Am. LLC</i> , IPR2020-00828, Paper 13, 15-16 (PTAB Nov. 3, 2020)	19
<i>Samsung Electronics Co., Ltd. et al v. GenghisComm Holdings, LLC</i> , IPR2025-00793, Paper 12 (PTAB Aug. 12, 2025)	3

LIST OF EXHIBITS

Exhibit No.	Description
2100 - 2163	[RESERVED]
2064	Complaint in <i>Edge Systems LLC v. Cartessa Aesthetics, LLC</i> , Case No. 20-CV-6082, Dkt. 1 (E.D.N.Y.)
2065 - 2066	[RESERVED]
2067	Summary Judgment Order in <i>Edge Systems LLC v. Cartessa Aesthetics, LLC</i> , Case No. 20-CV-6082, Dkt. 97 (E.D.N.Y. June 6, 2023)
2068	HydraFacial ITC Complaint against Cartessa Aesthetics, LLC and Eunsung Global Corp. in ITC Inv. No. 337-TA-1408 (ITC June 10, 2024)
2069	Eunsung Consent Order in ITC Inv. No. 337-TA-1408 (ITC Jan. 21, 2025)
2070 – 2157	[RESERVED]
2158	Transcript for Hearing on Preliminary Injunction in <i>HydraFacial LLC v. Aesthetic Management Partners LLC, et al.</i> , Case No. 24-cv-02480, Dkt. 82 (W.D. Tenn. July 25, 2025)
2159	Joint Planning Report in <i>HydraFacial LLC v. Aesthetic Management Partners LLC, et al.</i> , Case No. 24-cv-02480, Dkt. 72 (W.D. Tenn. July 18, 2025)
2160	Scheduling Order in <i>HydraFacial LLC v. Aesthetic Management Partners LLC, et al.</i> , Case No. 24-cv-02480, Dkt. 80 (W.D. Tenn. July 29, 2025)
2161	Initial Determination in ITC Inv. No. 337-TA-1408 (ITC August 26, 2025)
2162	Cartessa’s Petition for Review of the Initial Determination in ITC Inv. No. 337-TA-1408 (Sept. 8, 2025)

2163	Cartessa's Invalidity Contentions in Interrogatory Response No. 17 in ITC Inv. No. 337-TA-1408 (Oct. 22, 2024)
2164	Deposition Transcript of Harold Walbrink in IPR2025-00145 (July 30, 2025)

I. INTRODUCTION

The Director should exercise discretion under Section 314(a) and deny institution. The Workload Memo, Prior Findings Memo, and *Fintiv* factors¹ each support denial, and together they present a textbook example of when discretionary denial is warranted.

Settled Expectations and Delay. The '477 Patent has been in force for three years—since September 2022—creating settled expectations, particularly given that AMP has been aware of the '477 Patent since at least October 2023, when HydraFacial sent its initial cease-and-desist letter. Yet, AMP waited until July 2025 to file its IPR Petition. In the meantime, despite extensive settlement discussions and even full-day mediation, HydraFacial was forced to file suit in July 2024 asserting the '477 Patent, among others. Still, AMP delayed a full year before pursuing this IPR in July 2025—and then copied an IPR Petition originally filed by Eunsung months earlier, in January 2025.

¹ *Interim Processes for PTAB Workload Management* Memorandum (Mar. 26, 2025) (“Workload Memo”); *PTAB consideration of prior findings of fact and conclusions of law* Memorandum (Sept. 16, 2025) (“Prior Findings Memo”); *Apple Inc. v. Fintiv, Inc.*, IPR2020-00019, Paper 11 (PTAB Mar. 20, 2020) (precedential).

Prior Adjudications. Other forums have already adjudicated and upheld patents from the same family as the '477 Patent with substantially similar claims—precisely the type of circumstance the Director emphasized in the Workload Memo and Prior Findings Memo. For example, a district court upheld the validity of U.S. Patent No. 9,550,052 (“’052 Patent”)—a family member with substantially similar claims—granting HydraFacial’s motion for summary judgment of no invalidity over prior art materially similar to AMP’s primary references. Likewise, after a five-day trial, the ITC upheld the validity of U.S. Patent No. 11,865,287 (“’287 Patent”)—another family member with substantially similar claims—over the same prior art and arguments AMP now raises.

Product Investment and Commercial Success. HydraFacial has invested heavily in developing products that practice the claims of the '477 Patent, providing an additional basis for settled expectations. Since pioneering hydrodermabrasion around 2005, HydraFacial has been awarded numerous patents—including the '477, '052, and '287 Patents—that protect its core innovations. These innovations created an entirely new industry, fueling HydraFacial’s tremendous growth and dominant market share. The ITC has already recognized HydraFacial’s commercial success as directly tied to the '287 Patent’s claims, relying on that success as independent basis for patentability over the prior art. The same evidence likewise establishes the patentability of the challenged claims here, as HydraFacial will prove a nexus

between its commercial success and the '477 Patent's claims in its forthcoming POPR.

Parallel District Court Litigation. Meanwhile, AMP has not even sought to stay the ongoing district court litigation. At a July 2025 hearing, when AMP suggested it might seek a stay in August, the judge responded, "I hate stays"—and AMP ultimately did not file for one. In the meantime, fact discovery is advancing rapidly: over a million of pages have been produced, four depositions have been taken or calendared, and HydraFacial served infringement contentions on July 14, 2025. AMP's invalidity contentions are due on September 22, 2025, with claim construction exchanges beginning on September 26, 2025.

II. THE WORKLOAD AND PRIOR FINDINGS MEMOS CONFIRM THIS CASE WARRANTS DISCRETIONARY DENIAL OF AMP'S PETITION

A. AMP's Eleventh-Hour Copycat Petition Epitomizes Delay and Gamesmanship that Undermine Settled Expectations

The '477 Patent has been in force for three years, a period that supports settled expectations when combined with AMP's inexcusable delay in filing this IPR. *See Samsung Electronics Co., Ltd. et al v. GenghisComm Holdings, LLC*, IPR2025-00793, Paper 12 (PTAB Aug. 12, 2025) (denying IPR institution for patent in force for three years "based on a holistic assessment of all of the evidence and arguments presented.").

HydraFacial first notified AMP of its infringement of the '477 and '052 Patents in October 2023. Over the following year, the parties engaged in extensive discussions, exchanged settlement proposals, and even participated in a full-day mediation. When those efforts failed, HydraFacial filed suit in July 2024 in the Western District of Tennessee (“*AMP WDTN*”) asserting the '477, '052, and '287 Patents, among others. HydraFacial also filed a parallel ITC complaint (“*AMP ITC*”), which it later dismissed to focus on the district court action. After the statutory stay was lifted in April 2025, the litigation resumed with active discovery and continued settlement discussions, but again without resolution.

Meanwhile, HydraFacial moved for a preliminary injunction in June 2025 based on AMP’s infringement of the '052 and '287 Patents. In opposing that motion, AMP relied on the very same prior art—Karasiuk, Palmer, and Trueba—that it later recycled in this Petition. The district court held a four-hour evidentiary hearing on July 25, 2025, with live testimony from both parties’ experts; the court’s ruling is pending.

Only after all of this—nearly two years after HydraFacial’s first notice and almost a full year after litigation commenced—did AMP finally file this IPR on July 3, 2025. Worse, its Petition is a near-verbatim copy of an IPR filed by Eunsung months earlier. This eleventh-hour, copycat filing epitomizes the type of delay and

gamesmanship that undermines settled expectations and strongly favors discretionary denial under the Director's guidance.

B. Prior Adjudications Upholding Family Patents and Rejecting AMP's Prior Art Confirm the Petition Is Meritless

This is not the first time these patents and references have been tested—and each time the family patents have been upheld. As the Prior Findings Memo recognizes, adjudication of substantially similar claims over the same or similar prior art is highly probative, weighing heavily in favor of discretionary denial.

The '477 Patent is part of a close patent family that includes the '052 and '287 Patents—each of which recite substantially similar claim limitations directed to multi-container skin treatments systems enabling the selection and delivery of different treatment materials. Indeed, during prosecution of the '477 Patent, the examiner rejected the claims for nonstatutory double patenting over the '052 Patent and HydraFacial filed a terminal disclaimer in response. Ex. 1002, 118-125, 95-99. Further, during prosecution of the '287 Patent, the examiner rejected the claims for nonstatutory double patenting over claims of both the '052 and '477 Patents, stating that “[a]lthough the claims at issue are not identical, they are not patentably distinct from each other.” IPR2025-00145, Ex. 1002, 191-195. In response, HydraFacial filed a terminal disclaimer in the '287 patent with respect to the '052 and '477 Patents. *Id.*, 156-158.

Both the district court in *Cartessa EDNY* and the ALJ in *Cartessa ITC* have already upheld the validity of these family members over the same or similar prior art that AMP now recycles.

1. The District Court Already Upheld the Validity of the '052 Patent in *Cartessa EDNY*

In 2020, HydraFacial asserted the '052 Patent against a competitor, Cartessa Aesthetics, LLC (“Cartessa”) in *Edge Systems LLC v. Cartessa Aesthetics, LLC*, Case No. 20-CV-6082 (E.D.N.Y.) (“*Cartessa EDNY*”). Ex. 2064. In November 2022, HydraFacial moved for summary judgment, seeking a ruling that the '052 Patent was not invalid in view of U.S. Patent No. 6,162,232 to Shadduck (“Shadduck” or “the '232 patent”). Ex. 2067, 3. Cartessa argued that Shadduck anticipates the '052 Patent, citing Shadduck’s disclosure of delivering a “coolant fluid plus a crystalline agent” through a handpiece to impact the skin surface “to abrade away superficial layers.” *Id.*, 4 (quoting Shadduck, 9:40–45).

In June 2023, the district court granted HydraFacial’s motion for summary judgment of no invalidity, holding that Shadduck lacks a manifold and does not permit selection among multiple fluids. *Id.*, 5, 10. The court expressly found that HydraFacial “convincingly distinguishes the prior art taught in the Shadduck patent, mainly relying upon the expression of a manifold and the requirement of multiple selectable fluids.” *Id.*, 5. This same distinction likewise applies to AMP’s primary

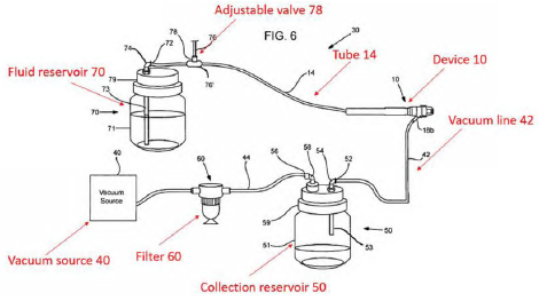
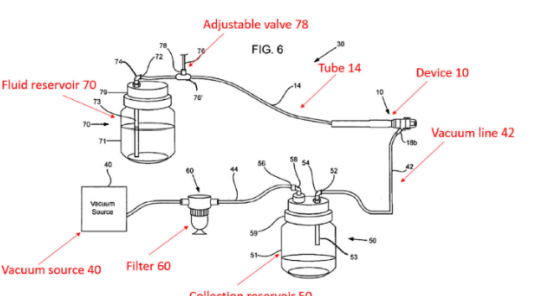
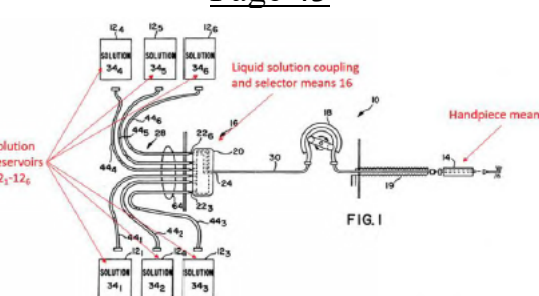
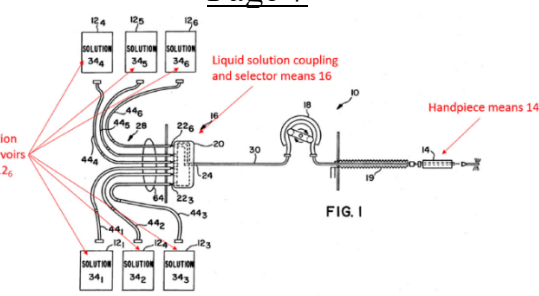
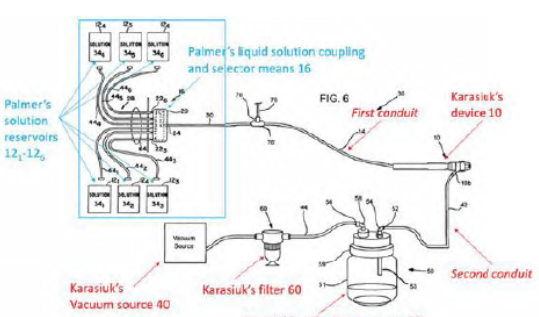
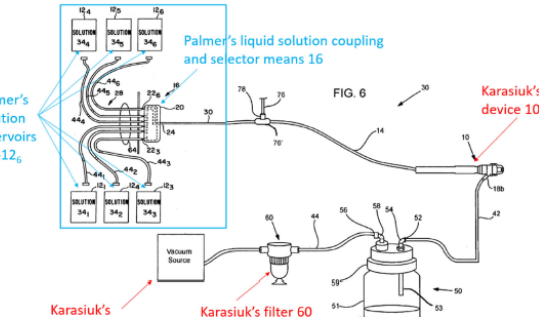
reference, Karasiuk, which—like Shadduck—fails to disclose a manifold or permit selection among multiple fluids.

The same distinction applies to the '477 Patent, which, like the '052 Patent, recites a manifold system that allows for the selection of different treatment materials from multiple containers. The district court's holding confirms that prior art of the type relied on by AMP—whether Shadduck or Karasiuk—fails to teach these features.

2. The ITC Already Determined that Karasiuk, Palmer, and Trueba Do Not Render the '287 Patent Invalid

In June 2024, HydraFacial filed an ITC complaint asserting the '287 Patent against Cartessa and its exclusive distributor, Eunsung Global Corp. ("Eunsung"), in Inv. No. 337-TA-1408 ("*Cartessa ITC*"). Ex. 2068. Eunsung exited *Cartessa ITC* in January 2025 after agreeing to a consent judgment (Ex. 2069) but continued to challenge the '477, '052, and '287 Patents in IPRs.

AMP has now copied Eunsung Petitions nearly verbatim. The Eunsung Petition, in turn, as shown below, replicated the annotated prior art figures for Karasiuk (Ex. 1004) and Palmer (Ex. 1005) that Cartessa submitted in invalidity contentions in *Cartessa ITC*. See Ex. 2163.

Cartessa's Invalidity Contentions in <i>Cartessa ITC</i> (Ex. 2163)	AMP's '477 Petition
<u>Page 15</u>  Karasiuk, FIG. 6 (annotated).	<u>Page 6</u>  Karasiuk, FIG. 6
<u>Page 43</u>  Palmer, FIG. 1	<u>Page 7</u>  Palmer, FIG. 1
<u>Page 50</u>  Palmer and Karasiuk, Modified FIG. 6.	<u>Page 17</u>  Karasiuk, Modified FIG. 6

These comparisons confirm that AMP's Petition is not only untimely but also derivative—relying on the exact same art and arguments already adjudicated and rejected in *Cartessa ITC*, and epitomizing the serial challenges the Director has cautioned against. Following a five-day trial in April 2025, the ALJ issued her Initial

Determination on August 26, 2025, finding a violation of Section 337. Ex. 2161.

The ALJ upheld the patentability of the '287 Patent over AMP's asserted references, making detailed findings on Karasiuk, Palmer, and Trueba:

Palmer: Palmer's "dental irrigation devices" are not analogous art to the "skin treatment devices" of the '287 Patent, and reliance on Palmer reflected "classic impermissible hindsight." *Id.*, 150–152.

Karasiuk + Palmer: There was no motivation to combine Karasiuk's single-container system with Palmer's multi-container structure because "there is no evidence that a person of ordinary skill...would have considered the lack of multiple containers...as a problem." *Id.*, 157–158. The combination also fails to disclose the "handpiece connected to the console" limitation. *Id.*, 158–161.

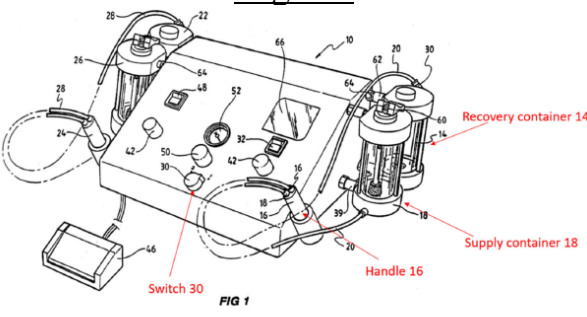
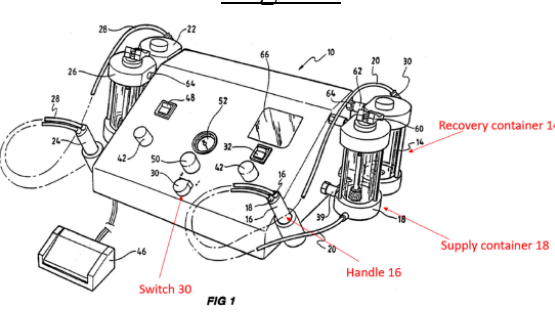
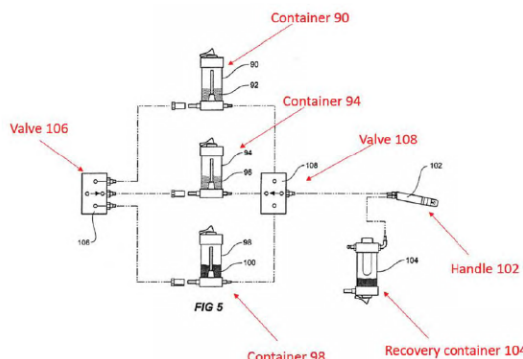
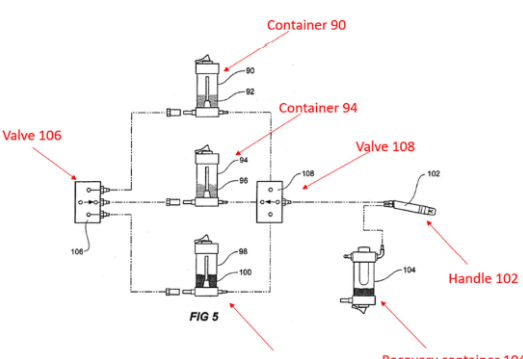
Trueba: Trueba is not analogous art. *Id.*, 140–143, 161.

These ITC determinations confirm that the AMP Petition lacks merit. Importantly, Cartessa declined to even seek Commission review of the ALJ's prior art and validity findings, challenging only infringement. Ex. 2162.

3. The ITC Already Determined that Greenberg's Dry-Particle System Cannot Satisfy the Treatment Material Limitations or Be Combined Across Embodiments

The ALJ in *Cartessa ITC* also considered Cartessa's reliance on U.S. Patent No. 5,989,230 to Greenberg ("Greenberg", Ex. 1006)—a reference AMP now

recycles in this IPR. Cartessa's ITC invalidity contentions contained the same annotated figures for Greenberg that AMP replies on in its Petition. *See* Ex. 2163.

Cartessa's Invalidity Contentions in <i>Cartessa ITC</i> (Ex. 2163)	AMP's '477 Petition
<u>Page 16</u>  Greenberg, FIG. 1 (annotated).	<u>Page 66</u>  Greenberg, FIG. 1
<u>Page 17</u>  Greenberg, FIG. 5 (annotated).	<u>Page 68</u>  Greenberg, FIG. 5

The ALJ rejected Cartessa's Greenberg arguments in their entirety, making detailed findings that foreclose AMP's reliance on Greenberg here. First, the ALJ found that Greenberg is directed to microdermabrasion using dry abrasive particles, not hydrodermabrasion using fluids. Ex. 2161, 100-106. The ALJ credited HydraFacial's expert testimony that Greenberg's containers are "strictly designed for dry particle systems, not for liquid," and that any attempt to run liquids through

Greenberg’s supply containers “would be trapped in there.” *Id.*, 114–115 (quoting Mr. Leinsing’s testimony). On this basis, the ALJ expressly held that Greenberg is incompatible with a liquid system and fails to disclose the “fluid” or “treatment material” limitations of the ’287 Patent’s claims. *Id.*, 115; *see also id.*, 106-115. Related to this, the ALJ rejected Cartessa’s attempt to treat Greenberg’s occasional mention of oils or fragrances as disclosing the claimed fluid system. *Id.*, 106-109.

Next, the ALJ held that Cartessa and its expert improperly “indiscriminately switched between different embodiments” of Greenberg in an effort to meet claim limitations. *Id.*, 115–117. For example, Cartessa tried to import a vacuum source from a different embodiment (Fig. 6) into the Fig. 5 embodiment—as does AMP in the IPR—even though Fig. 5 relies solely on positive airflow. *Id.*, 116–117. The ALJ rejected this as conclusory, confusing, and ignoring “complexities and incompatibility of the different designs shown in Greenberg.” *Id.* AMP’s Petition likewise attempts to combine different embodiments from Greenberg. *See Pet.*, 77–82 (attempting to combine Fig. 3, Fig. 5, and Fig. 1 embodiments). In sum, the ALJ’s findings foreclose AMP’s reliance on Greenberg.

4. The ITC Also Found HydraFacial’s Commercial Success to Be Independent Evidence of Nonobviousness

In addition to rejecting Cartessa’s prior art, the ALJ in *Cartessa ITC* made detailed findings confirming that HydraFacial’s commercial success is independent

evidence of nonobviousness. Ex. 2161, 174–184.

The ALJ found that HydraFacial has practiced the '287 Patent's claims since at least 2005, when it launched its multi-container hydrodermabrasion system having a manifold. *Id.*, 174–175. The ALJ credited HydraFacial's significant revenue and sales growth tied directly to the patented features—particularly when compared to HydraFacial's single-container device, Nectre, which did not practice the claims because it lacked a manifold and the ability to use multiple treatment containers simultaneously. *Id.*, 176–183. This contrast confirms that the claimed manifold system—not unclaimed features—drove HydraFacial's commercial success. *Id.*

The ALJ also considered and rejected Cartessa's arguments that HydraFacial's growth was attributable to marketing or other external factors, concluding instead that “commercial success of the HydraFacial Systems is not merely a result of overall market trends but is directly tied to its patented innovations, including the '287 patent.” *Id.*, 183–184; *see also id.*, 184 (“The consistent and substantial growth in revenue, coupled with a preference for the HydraFacial Systems over simpler alternatives, like the Nectre, provides additional support for a finding of non-obviousness of the '287 patent.”).

Notably, Cartessa did not even seek Commission review of these findings on commercial success, electing instead to challenge only infringement. Ex. 2162.

In short, both the district court and the ITC have already adjudicated substantially similar claims against the same or similar prior art and upheld their patentability. The Director's Prior Findings Memo makes clear that such determinations are highly probative. AMP's Petition simply rehashes arguments that have already been rejected in multiple forums, confirming that discretionary denial is warranted.

C. HydraFacial Made Significant Investment in Developing Products that Practice the '477 Patent Claims

The Director has held that an independent way to demonstrate settled expectations is through "an extraordinary amount of investment, time, and resources dedicated to research, development, trials, and regulatory approval." *Amgen Inc. v. Bristol-Myers Squibb Co.*, IPR2025-00601, Paper 9 at 2 (PTAB July 24, 2025).

As the ID in *Cartessa ITC* recognizes regarding economic domestic industry, HydraFacial has made significant investment in developing its Tower, Elite, Allegro, and Syndeo products, which practice the claims of the '287 Patent. Ex. 2161, 237-257. These same products also practice the claims of the '477 Patent.

D. Testimony from AMP's Expert's Witness Confirms the Petition Is Meritless

As discussed above, both the district court and the ITC have already adjudicated substantially similar claims against the same or similar prior art and upheld their validity, confirming AMP's Petition is without merit.

Although HydraFacial will fully address the weak merits of the Petition in its POPR, HydraFacial briefly notes here that AMP’s expert witness, Mr. Walbrink, has already testified that the references AMP relies on for the “manifold system” limitation cannot satisfy that limitation.

Mr. Walbrink testified that a “manifold” requires multiple passageways (e.g., “multiple inlets and a single outlet”) and cannot be an object with just a single inlet and single outlet. Ex. 2164, 59:10–62:21. Mr. Walbrink admitted that Palmer, which AMP relies on for the “manifold system” limitation in the Karasiuk + Palmer combination, cannot satisfy that limitation under Mr. Walbrink’s own understanding of the term “manifold.” *Id.*, 75:1–77:13 (agreeing that “at any given time or any selection, the selector means has one of the selection tubes as the inlet and then the handpiece as the outlet” and agreeing “it can only have one solution tube as the inlet.”). Mr. Walbrink also agreed that Greenberg, like Palmer, discloses “only one inlet going to the outlet to the handpiece.” *Id.*, 86:3–23. Thus, Palmer and Greenberg cannot satisfy the claimed “manifold system” as the Petition alleges.

III. THE FINTIV FACTORS CONFIRM THIS CASE WARRANTS DISCRETIONARY DENIAL OF AMP’S PETITION

A. Factor 1 favors discretionary denial because a stay is highly unlikely

Factor 1 concerns “whether a stay exists or is likely to be granted if a proceeding is instituted.” *Fintiv* at 6. *AMP WDTN* has not been stayed and AMP has not moved for a stay. AMP stated in the Joint Planning Report, filed July 18, 2025,

that “AMP anticipates it likely will move to stay the district court proceedings until these IPRs have concluded.” Ex. 2159, 4. At the PI hearing on July 25, 2025, AMP informed the judge, “you might hear from us in August” on a stay motion. Ex. 2158, 177. But AMP never moved for a stay in August, and still has not in September, electing to proceed with fact discovery in full force (discussed below).

It is highly unlikely that the court will grant a stay even if AMP moves for one. The judge responded to AMP’s contemplated stay motion by stating “*I hate stays*, but we’ll see what happens.” Ex. 2158, 171. She continued: “I do not like cases to sit...I’m going to move cases along” and “we’ll keep the case moving as quickly as we can.” *Id.*, 175-176. Because the court has not issued a stay and confirmed it is unlikely to do so, Factor 1 favors discretionary denial. There is a high risk of inconsistent outcomes and duplication of efforts, which counsels against institution.

B. Factor 2 favors discretionary denial because the judge will schedule trial as soon as permitted by the Patent Local Rules

Factor 2 concerns “proximity of the court’s trial date to the Board’s projected statutory deadline for a final written decision.” *Fintiv* at 6. Each of *Cartessa EDNY*, *Cartessa ITC*, and *AMP WDTN* support discretionary denial under Factor 2.

Cartessa EDNY resulted in summary judgement of no invalidity of the ’052 patent in June 2023— three and a half years before the expected Final Written

Decision date for AMP’s Petition (January 2027). *See* Ex. 2067. *Cartessa ITC* resulted in findings on AMP’s prior art in the Final ID in August 2025, with the Commission set to issue its Final Determination no later than December 2025—more than a year before the expected Final Written Decision.

In *AMP WDTN*, the judge stated, “I usually set a trial [date] at scheduling conferences,” which was held on July 25, 2025 in *AMP WDTN* as part of the PI Hearing. Ex. 2158, 172. Here, the judge could not set the trial date at the scheduling conference because, as a patent case, the trial date is set by the patent local rules based on the date the judge issues the claim construction ruling. Ex. 2160, 1-2. In this regard, the judge agreed during the PI Hearing to set the claim construction hearing for February 27, 2026, and assured the parties that “we’ll keep the case moving as quickly as we can.” *Id.*, 174-176.

C. Factor 3 favors denial of institution because the district court and parties have made substantial investments in the district court litigation

Factor 3 concerns “the amount and type of work already completed in the parallel litigation by the court and the parties at the time of the institution decision.” *Fintiv* at 9. In considering the timing of the petition relative to the progress of the case, the Board has observed the following:

If the evidence shows that the petitioner filed the petition expeditiously, such as promptly after becoming aware of the claims being asserted,

this fact has weighed against exercising the authority to deny institution under NHK.

Fintiv at 11-12.

Here, AMP did not file the petition expeditiously and did not even file its own petition. Rather, AMP waited a full year after the complaint was filed in district court, and nearly two years after being made aware of the '477 Patent, to file it verbatim copy of Eunsung's petition. *Supra* Section II.A.

The district court and the parties have already made a significant investment in the *AMP WDTN* case. The parties completed their briefing on HydraFacial's PI Motion related to infringement and validity of the '287 and '052 Patents in June and July 2025, with the judge holding the hearing in July 2025 consisting of approximately four hours of attorney argument and live testimony from the expert witnesses.

The parties have already conducted extensive fact discovery. HydraFacial has produced roughly 1.1 million pages of documents, which were first produced in *AMP ITC* and made available in *AMP WDTN* as part of a cross-use agreement. In *AMP ITC*, AMP also took the depositions of multiple third-party witnesses and those transcripts are available in *AMP WDTN*. Additionally, as of this filing, HydraFacial has taken two depositions of AMP's fact witnesses and scheduled dates for two more

depositions. The parties will also soon begin the process of collecting and producing email messages.

HydraFacial served its infringement contentions on July 14, 2025, and AMP served its non-infringement contentions on August 25, 2025. Ex. 2160, 1. AMP will be serving invalidity and unenforceability contentions on September 22, 2025, and HydraFacial's validity and enforceability contentions are due on October 13, 2025. *Id.*, 1-2. The parties will begin their claim construction exchanges on September 26, 2025, with opening and rebuttal expert reports for claim construction due on November 13 and November 26, 2025, respectively. *Id.*, 2. Opening claim construction briefs will be filed on January 6, 2026, and the responsive briefs will be filed on February 4, 2026. The judge will hold the claim construction hearing on February 27, 2026.

D. Factor 4 strongly favors denial of institution because there is substantial overlap between this IPR and the parallel litigations

Factor 4 concerns “overlap between issues raised in the petition and in the parallel proceeding.” *Fintiv* at 12. Here, AMP seeks to relitigate the prior art and grounds already adjudicated and rejected in *Cartessa ITC*. *Supra* Section II.B. Indeed, Cartessa's invalidity contentions in *Cartessa ITC* raised the same arguments using the same annotated figures that AMP now uses in its IPR. *Id.* In upholding the validity of the '287 Patent, the ALJ made factual findings on Palmer and Trueba,

finding they are non-analogous art to the '287 Patent and finding no motivation to combine these disparate references with AMP's primary reference, Karasiuk. *Id.*

E. Factor 5 favors denial of institution because the petitioner in this IPR and the defendant in the pending litigation are the same party—AMP—and AMP rehashes Cartessa's positions from the concluded *Cartessa ITC*

Factor 5 concerns "whether the petitioner and the defendant in the parallel proceeding are the same party." *Fintiv* at 13.

In the pending *AMP WDTN* case, the parties are indeed the same—AMP is both the Petitioner in this IPR and the defendant in that pending litigation. Accordingly, *AMP WDTN* favors discretionary denial under Factor 5.

In addition, although AMP was not a party in *Cartessa ITC*, AMP's Petition advances the same invalidity arguments that were already unsuccessfully litigated in *Cartessa ITC*, as described above. *Supra* Section II.B. Indeed, AMP affirmatively created a relationship to *Cartessa ITC*—and now seeks to relitigate Cartessa's already-litigated arguments—by using Cartessa's Karasiuk- and Greenberg-based invalidity contentions. Accordingly, *Cartessa ITC* also favors discretionary denial under Factor 5. *See Fintiv* at 13-14 ("Even when a petitioner is unrelated to a defendant, however, if the issues are the same as, or substantially similar to, those already or about to be litigated, or other circumstances weigh against redoing the work of another tribunal, the Board may, nonetheless, exercise the authority to deny institution."); *see also Fitbit Inc. v. Philips North Am. LLC*, IPR2020-00828, Paper

13, 15-16 (PTAB Nov. 3, 2020) (finding that “the similarities in the invalidity contentions and claim construction positions of the litigations strongly indicate that Fitbit and Garmin are coordinating their litigation efforts” and that “[a]ccordingly, the fifth Fintiv factor weighs in favor of invoking our discretion to deny institution”).

F. Factor 6 strongly favors denial of institution because the Petition lacks merit and is outweighed by the principles of efficiency and economy

Factor 6 concerns “other circumstances that impact the Board’s exercise of discretion, including the merits.” *Fintiv* at 14. Here, Factor 6 strongly favors discretionary denial because the Petition is meritless and heavily outweighed by the principles of efficiency and economy, as discussed above.

IV. CONCLUSION

For the foregoing reasons, HydraFacial respectfully requests that the Director discretionarily deny institution of the Petition.

Respectfully submitted,

MORGAN, LEWIS & BOCKIUS LLP

Dated: September 17, 2025

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), I certify that on the date below, a copy of this
**BRIEF IN SUPPORT OF PATENT OWNER'S REQUEST FOR
DISCRETIONARY DENIAL AND EXHIBITS 2064, 2067-2069, AND 2158-
2164** was served via the email correspondence address of record for Petitioner's
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