

**UNITED STATES PATENT AND TRADEMARK OFFICE**

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**BEFORE THE PATENT TRIAL AND APPEAL BOARD**

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L'ORÉAL USA, INC.,

Petitioner,

v.

UNIVERSITY OF MASSACHUSETTS,

Patent Owner.

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Case IPR2018-00778

Patent No. 6,423,327 B1

**PETITIONER'S CORRECTED REQUEST FOR REHEARING  
UNDER 37 C.F.R. § 42.71(d)**

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U.S. Patent & Trademark Office  
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## I. REQUEST FOR RELIEF

In response to the Decision Denying Institution of IPR2018-000778 (“Decision,” Paper 9) finding that claims 1-7 and 9 of U.S. Patent No. 6,423,327 (“the ‘327 patent”) are not unpatentable as set forth in Grounds 1-3 of the Petition for *Inter Partes* Review (“Petition,” Paper 2), Petitioner respectfully requests rehearing under 37 C.F.R. § 42.71(d) of Grounds 1-3.

## II. ARGUMENT

A party may request rehearing of a decision by the Board whether to institute a trial, which the Board will review for an abuse of discretion. 37 C.F.R. §42.71(c). “An abuse of discretion may be indicated if a decision is based on an erroneous interpretation of law, if a factual finding is not supported by substantial evidence, or if the decision represents an unreasonable judgment in weighing relevant factors.” *Palo Alto Networks, Inc. v. Juniper Networks, Inc.*, IPR2013-00369, Paper 39, 2–3 (P.T.A.B. Feb. 14, 2014).

In the current proceeding, Petitioner respectfully submits that the Board misapplied the standard for claim construction, erred in finding that prosecution disclaimer did not apply, and overlooked evidence of record in interpreting the language “applied to the dermal cells,” which interpretation the Board relied on to deny institution of Grounds 1-3. Rehearing is therefore respectfully requested.

### **A. The Board’s interpretation amounts to an erroneous application of the law and is unreasonable in view of relevant factors**

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