

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK**

HCT ASIA LTD.

Plaintiff,

v.

APTARGROUP, INC.,

Defendant.

Case No. 1:19-cv-00717-KPF

**FIRST AMENDED COMPLAINT**

**JURY TRIAL DEMANDED**

Plaintiff HCT Asia Ltd. (“HCT Asia”) brings this action against Defendant AptarGroup, Inc. (“Aptar”) as follows:

**NATURE OF THE ACTION**

1. This is a civil action for infringement of United States Patent Nos. 7,883,287 (“’287 Patent”); 8,292,535 (“’535 Patent”); 9,016,968 (“’968 Patent”); and 9,833,055 (“’055 Patent,” and collectively, the “Asserted Patents”) under the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

**PARTIES**

2. Plaintiff HCT Asia is a Hong Kong corporation with a place of business located in Hong Kong, and is a wholly owned subsidiary of HCT Group Holdings Ltd. (“HCT Group,” and collectively, “HCT”).

3. Upon information and belief, Defendant Aptar is a Delaware corporation having its principal place of business at 475 West Terra Cotta, Suite E, Crystal Lake, IL 60014, and can be served through its registered agent, Cogency Global Inc., 850 New Burdon Rd., Suite 201, Dover, DE 19904.

**JURISDICTION AND VENUE**

4. The Court has subject matter jurisdiction over these claims under 28 U.S.C. §§ 1331, 1338(a), 1367(a) and the patent laws of the United States, 35 U.S.C. § 1 *et seq.*

5. This Court also has subject matter jurisdiction over this action under 28 U.S.C. § 1332 in that it is an action between citizens of different states in which the matter in controversy exceeds, exclusive of costs and interest, seventy-five thousand dollars.

6. The Court has personal jurisdiction over Aptar consistent with the requirements of the Due Process Clause of the United States Constitution and the New York Long Arm Statute, NY CPLR § 302 (2012). On information and belief, Aptar has regularly and systematically transacted business in New York, directly or through subsidiaries or intermediaries, and/or committed acts of patent infringement in New York as alleged more particularly below. Aptar has also placed infringing products into the stream of commerce by selling those products in New York or knowing that the products would be shipped into and sold in New York. Additionally, Aptar operates a manufacturing and sales office in this District at 250 North Route 303, Congers, NY 10920-1408.

7. Based upon at least the above, Aptar has a regular and established place of business in this District, and thus venue is proper in this judicial district under 28 U.S.C. § 1400(b) and 28 U.S.C. §§ 1391(b) and (c).

**THE ASSERTED PATENTS**

8. The '287 Patent is titled "Dispenser With Thermal Storage Tip" and issued on February 8, 2011 to inventor Timothy Thorpe. HCT Asia owns the entire right, title, and interest in and to the '287 Patent. A true and correct copy of the '287 Patent is attached hereto as Exhibit A.

9. The '535 Patent is titled "Dispenser With Thermal Storage Tip" and issued on October 23, 2012 to inventor Timothy Thorpe. HCT Asia owns the entire right, title, and interest in and to the '535 Patent. A true and correct copy of the '535 Patent is attached hereto as Exhibit B.

10. The '968 Patent is titled "Cosmetic Device With Thermal Storage Tip" and issued on April 28, 2015 to inventor Timothy Thorpe. HCT Asia owns the entire right, title, and interest in and to the '968 Patent. A true and correct copy of the '968 Patent is attached hereto as Exhibit C.

11. The '055 Patent is titled "Cosmetic Device With Thermal Storage Tip" and issued on December 5, 2017 to inventor Timothy Thorpe. HCT Asia owns the entire right, title, and interest in and to the '055 Patent. A true and correct copy of the '055 Patent is attached hereto as Exhibit D.

## **BACKGROUND**

### **HCT and Its Mission**

12. HCT Group was founded in 1992 and is a global leader in cutting-edge innovation, design, and beauty manufacturing. HCT collectively offers a comprehensive range of beauty formulations, brushes, airless and metal components, point-of-sale displays, and high-quality designs. HCT develops beauty products from concept to creation in collaboration with some of the most recognizable cosmetics companies in the world.

13. As part of its mission to bring to all of its customers unique, innovative products unlike anything else on the market, HCT makes substantial investments in research, development, and protection of its intellectual property. HCT Group and its subsidiaries, including HCT Asia, have been awarded well over 100 patents in the United States and abroad,

and it has received numerous awards for its innovations, including Package Innovator of the Year at Independent Cosmetic Manufacturers and Distributors and Best Innovative Packaging at Cosmopack Innovation & Inspiration Awards.

**HCT's Patented Technology**

14. HCT's President Timothy Thorpe, a named inventor on nearly 50 issued U.S. Patents, invented the patented thermal tips when he discovered that certain metal tips could be used under the eye for an immediate cooling sensation and to reduce swelling and that the tips could be combined with an applicator so that the product dispensed through the tip rather than through a separate applicator. Thorpe's thermal tip design was a significant improvement over other application methods, such as roller balls, which roll back into the components and are therefore less sanitary, and tips that require refrigeration prior to use.

15. Consistent with its mission, HCT Group and its subsidiaries sought patent protection both in the United States and abroad for Thorpe's inventions and began developing the patented thermal tip technology for commercial use. HCT invested significant resources over several years to perfect its design and to solve several manufacturing challenges related to, for example, injection molding, polishing, plating, avoiding rust, improving compatibility and stability, and assembly.

16. The patented thermal tip technology debuted in 2009 as part of Dior's line of premier Capture Totale skincare products. The injection molded metal tips, which were attached to stock tubes, added a cooling application for sensitive and delicate areas around the eyes, consistent with Thorpe's inventions.



***Dior's Capture Totale product incorporating HCT's patented thermal tip design.***

17. Industry recognition of HCT's breakthrough was immediate. The Dior Capture Totale product, using HCT's patented thermal tips, won an International Package Design Award in 2009, and a Clinique color cosmetic applicator that also used HCT's patented thermal tips won a special Cosmoprof Award for innovative design in 2012. Also in 2012, an international jury of packaging experts awarded HCT's tips the prestigious Formes de Luxe Award, which is awarded for design innovations in luxury cosmetics. Indeed, since its launch, HCT's patented thermal tip technology has become one of HCT's core products and a significant source of brand recognition and industry goodwill.

**Aptar's Infringing Skin Master Product and Interference With HCT's Customers**

18. Several years after HCT's successful launch and widespread adoption of the patented thermal tip technology, HCT became aware that Aptar planned to launch a copycat product called "Skin Master" at the 2015 Luxepack convention, a cosmetics packaging trade show, in Monaco. See "Skin Master: A New Beauty Experience,"

<http://news.aptar.com/solutions/skin-master-a-new-beauty-experience/> (last visited January 24,

2019). Like HCT's patented thermal tips, the Skin Master was intended to be used mainly under the eyes and included applicator tips made of "cold" metal or ceramic in combination with a product reservoir to both apply product and massage simultaneously. *Id.*



*Aptar's infringing Skin Master product*

19. HCT notified Aptar of its concerns regarding infringement in a letter dated February 25, 2016, identifying the Asserted Patents and the accused Skin Master product. Shortly thereafter, at Aptar's suggestion, HCT and Aptar began discussing a potential resolution. HCT entered these discussions in good faith, believing that Aptar had a genuine intention to resolve the matter amicably.

20. HCT and Aptar's initial discussions seemed fruitful, and HCT asked Aptar to cease all infringing activity until a resolution could be finalized. Aptar led HCT to believe that it was complying with this request while an agreement was being negotiated. It eventually became clear, however, that Aptar had no intention of finalizing a deal. Aptar continually delayed its communications and stalled the discussions.

21. In early 2017, it became clear that Aptar was being intentionally misleading and negotiating in bad faith. HCT learned that, not only had Aptar not ceased production or

marketing of its Skin Master product as requested, but had gone so far as to publicly tout its partnership with Estée Lauder Companies Inc. (“ELC”)—one of the largest and most recognizable cosmetics brands in the world—on an eye gel applicator product. *See, e.g.*

Transcript of AptarGroup, Inc. Q1 2017 Earnings Conference Call,

<https://www.nasdaq.com/aspx/call-transcript.aspx?StoryId=4066971&Title=aptargroup-s-atr-ceo-stephan-tanda-on-q1-2017-results-earnings-call-transcript> (last visited January 24, 2019)

(“During the quarter, we participated in several global beauty product launches including Estée Lauder’s new revitalizing eye gel, global beauty – excuse me. Estée Lauder’s revitalizing eye gel, which features our Skin Master cool touch applicator.”).

22. HCT and ELC have a longstanding business relationship, dating back to at least 2014, in which HCT has provided packaging and other materials to ELC for a wide range of its cosmetics products. HCT, in the past, has also provided its patented thermal tips to ELC. For three straight years, HCT was the recipient of ELC’s Supplier Excellence Award, which recognizes ELC’s partners in categories of operating performance, packaging innovation, sustainability, and agility. *See* “Recognizing Excellence,”

<https://www.elcompanies.com/suppliers/working-together/recognizing-excellence> (last visited January 24, 2019). In 2017, HCT won the Supplier Excellence Award in the “Agility” category.

*See* “HCT Wins Estée Lauder’s Supplier Excellence Award,”

[https://www.beautypackaging.com/contents/view\\_breaking-news/2017-11-29/hct-wins-estee-lauders-supplier-excellence-award](https://www.beautypackaging.com/contents/view_breaking-news/2017-11-29/hct-wins-estee-lauders-supplier-excellence-award) (last visited January 24, 2019).

23. Aptar is also a supplier to ELC, and Aptar has been well aware of HCT’s relationship with ELC for several years through at least its participation in numerous meetings and discussions involving all three of ELC, HCT, and Aptar. For example, HCT informed ELC

in April 2018 that Aptar's Skin Master tip (which was being supplied to ELC for its aforementioned eye gel product) infringed several HCT patents, and that HCT had sent cease and desist letters to Aptar. ELC immediately thereafter communicated to Aptar its desire that Aptar timely resolve the matter.

24. Aptar promised ELC that it would resolve the patent infringement issues raised by HCT and went so far as to misrepresent the status and substance of HCT and Aptar's discussions to make it appear that HCT and Aptar were close to an agreement to jointly supply components to ELC. ELC has since expressed disappointment that Aptar had broken its express promise to resolve the matter amicably.

25. HCT continued throughout 2018 to attempt to work with Aptar and find a business solution despite Aptar's bad faith tactics and misrepresentations to ELC. Aptar's ongoing marketing and selling of the Skin Master, however, continues to cause irreparable damage to HCT by at least stealing sales, causing loss of goodwill, causing damage to HCT's relationship with ELC, and eroding its significant investment in intellectual property and high-quality thermal tip products. HCT has now been left with no choice but to bring this action to enforce its patents and other rights.

#### **CLAIMS FOR PATENT INFRINGEMENT**

26. The allegations provided below are exemplary and without prejudice to HCT Asia's infringement contentions provided pursuant to the Court's scheduling order and local rules. In providing these allegations, HCT Asia does not convey or imply any particular claim constructions or the precise scope of the claims. HCT Asia's claim construction contentions regarding the meaning and scope of the claim terms will be provided under the Court's scheduling order and local rules.



27. The accused products include, but are not limited to, Aptar's Skin Master applicator ("Skin Master") and products sold by cosmetic brands in the United States that, on information and belief, incorporate the Skin Master, including at least Estée Lauder's Revitalizing Supreme+ Global Anti-Aging Cell Power Eye Gelee and René Furterer's Triphasic Progressive Concentrated Serum (collectively, the "Accused Products"). See <https://beauty-home.aptar.com/en-us/dispensing-solutions/skin-master.html> (last visited January 24, 2019); <https://www.estelauder.com/product/681/46779/product-catalog/skincare/revitalizing-supreme/global-anti-aging-cell-power-eye-gelee> (last visited January 24, 2019); <https://www.renefurtererusa.com/triphasic-progressive-concentrated-serum.html> (last visited January 24, 2019). As detailed below, each element of at least one claim of each of the Asserted Patents is literally present in the Accused Products. To the extent that any element is not literally present, each such element is present under the doctrine of equivalents.

## COUNT I

### **INFRINGEMENT OF THE '287 PATENT**

28. HCT Asia incorporates by reference the allegations set forth in paragraphs 1 through 27 as though fully set forth herein.

29. On information and belief, Aptar has infringed and continues to infringe, and/or has contributed to or induced the infringement of, one or more claims of the '287 Patent, including claim 10 and other claims that depend from claim 10, literally or under the doctrine of equivalents, by making, using, importing, selling, and/or offering to sell in the United States without authority or license the Accused Products in violation of 35 U.S.C. § 271.<sup>1</sup> For example,

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<sup>1</sup> HCT Asia also seeks damages for any and all infringement related to international and/or foreign sales, to the extent permitted by applicable case law, for example, *WesternGeco LLC v. ION Geophysical Corp.*, 138 S. Ct. 2129 (2018), and other case law interpreting or applying same.

on information and belief, Aptar (an organization based in and having sales offices throughout the United States, including in this district) has at least marketed, demonstrated, sold, and/or offered to sell infringing Skin Master tips to at least ELC, which is headquartered in this district (New York, NY).

30. Claim 10 of the '287 Patent recites "a housing having a reservoir for containing a product." The Accused Products include a housing having a reservoir for containing a product. For example, the Accused Products include a housing having a reservoir for containing, e.g., an eye gel or serum product.

31. Claim 10 of the '287 Patent recites "a thermal storage tip coupled to the housing, the thermal storage tip having an application face with a surface finish of about 30 to about 70 micro-inches for applying the product to a surface and a product delivery passage way extending through the thermal storage tip and terminating in an aperture in the application face." The Accused Products include a thermal storage tip coupled to the housing, the thermal storage tip having an application face with a surface finish of about 30 to about 70 micro-inches for applying the product to a surface, and a product delivery passage way extending through the thermal storage tip and terminating in an aperture in the application face. For example, the Accused Products can include either a "Cool Touch Applicator" or "Icy Touch Applicator" tip coupled to the housing that has a surface finish of about 30 to about 70 micro-inches for applying, e.g., an eye gel or serum product, to a surface and a product delivery passage way extending through the tip and terminating in an aperture in the application face.

32. Claim 10 of the '287 Patent recites "the thermal storage tip comprising a metal or a ceramic and having a volume of at least about 300 millimeters<sup>3</sup> and at most about 700 millimeters<sup>3</sup>." The Accused Products include the thermal storage tip comprising a metal or a

ceramic and having a volume of at least about 300 millimeters<sup>3</sup> and at most about 700 millimeters<sup>3</sup>. For example, the “Cool Touch Applicator” and “Icy Touch Applicator” tips comprise metal or ceramic, respectively, and have a volume of at least about 300 millimeters<sup>3</sup> and at most about 700 millimeters<sup>3</sup>.

33. To the extent required, HCT Asia has complied with 35 U.S.C. § 287(a) with respect to the ’287 Patent. Further, as alleged below, Aptar received actual notice of the ’287 patent.

34. By at least February 25, 2016, HCT disclosed the existence of the ’287 Patent to Aptar and identified at least some of Aptar’s activities that infringe the ’287 Patent. Thus, Aptar has had knowledge of the ’287 Patent and that its activities infringe the ’287 Patent since at least February 25, 2016. Based on HCT’s disclosures, Aptar has also known or should have known since at least February 25, 2016 that its customers, distributors, and other purchasers of the Accused Products are infringing the ’287 Patent at least because Aptar has known that it is infringing the ’287 Patent.

35. On information and belief, Aptar has continued to make, use, offer for sale, and/or sell the Accused Products in the United States and/or import the Accused Products into the United States despite its knowledge of the ’287 Patent and its infringement of that patent. Aptar’s infringement has been and continues to be willful.

36. On information and belief, Aptar also actively, knowingly, and intentionally induces infringement of one or more claims of the ’287 Patent under 35 U.S.C. § 271(b) by actively encouraging others to make, use, offer to sell, sell, and/or import the Accused Products in this judicial district and elsewhere in the United States. For example, Aptar, through its sales and distribution channels, encourages customers to sell, offer to sell, and/or import the Accused

Products in the United States. *See, e.g.* Transcript of AptarGroup, Inc. Q1 2017 Earnings Conference Call, <https://www.nasdaq.com/aspx/call-transcript.aspx?StoryId=4066971&Title=aptargroup-s-atr-ceo-stephan-tanda-on-q1-2017-results-earnings-call-transcript> (last visited January 24, 2019) (“During the quarter, we participated in several global beauty product launches including Estée Lauder’s new revitalizing eye gel, global beauty – excuse me. Estée Lauder’s revitalizing eye gel, which features our Skin Master cool touch applicator.”).

37. On information and belief, Aptar also contributes to infringement of one or more claims of the ’287 Patent under 35 U.S.C. § 271(c) by (1) knowing that the Accused Products would be combined with other components to infringe the ’287 Patent and (2) knowing that the Accused Products have no substantial non-infringing use. For example, Aptar provides the Skin Master tips to René Furterer, which combines the Skin Master with its own dispensing components and then sells the complete product in the United States. On information and belief, Aptar does this knowing that the Skin Master is to be used in an infringing manner and that it has no substantial non-infringing use.

38. HCT Asia has suffered and continues to suffer damages as a result of Aptar’s infringement of the ’287 Patent.

## COUNT II

### **INFRINGEMENT OF THE ’535 PATENT**

39. HCT Asia incorporates by reference the allegations set forth in paragraphs 1 through 38 as though fully set forth herein.

40. On information and belief, Aptar has infringed and continues to infringe, and/or has contributed to or induced the infringement of, one or more claims of the ’535 Patent,

including at least claim 8 and other claims that depend from claim 8, literally or under the doctrine of equivalents, by making, using, importing, selling, and/or offering to sell in the United States without authority or license the Accused Products in violation of 35 U.S.C. § 271.<sup>2</sup> For example, on information and belief, Aptar (an organization based in and having sales offices throughout the United States, including in this district) has at least marketed, demonstrated, sold, and/or offered to sell infringing Skin Master tips to at least ELC, which is headquartered in this district (New York, NY).

41. Claim 8 of the '535 Patent recites “a housing having a reservoir for containing a product.” The Accused Products include a housing having a reservoir for containing a product. For example, the Accused Products include a housing having a reservoir for containing, e.g., an eye gel or serum product.

42. Claim 8 of the '535 Patent recites “a thermal storage tip coupled to the housing, the thermal storage tip having an application face for applying the product to a surface and a product delivery passageway extending through the thermal storage tip and terminating in an aperture in the application face, the thermal storage tip comprising a metal or a ceramic and having a volume of at least about 300 millimeters<sup>3</sup> and at most about 700 millimeters<sup>3</sup>.” The Accused Products include a thermal storage tip coupled to the housing, the thermal storage tip having an application face for applying the product to a surface and a product delivery passageway extending through the thermal storage tip and terminating in an aperture in the application face, the thermal storage tip comprising a metal or a ceramic and having a volume of at least about 300 millimeters<sup>3</sup> and at most about 700 millimeters<sup>3</sup>. For example, the Accused

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<sup>2</sup> HCT also seeks damages for any and all infringement related to international and/or foreign sales, to the extent permitted by applicable case law, for example, *WesternGeco LLC v. ION Geophysical Corp.*, 138 S. Ct. 2129 (2018), and other case law interpreting or applying same.

Products can include either a “Cool Touch Applicator” or “Icy Touch Applicator” tip coupled to the housing, and the tip includes a product delivery passageway extending through the storage tip and terminating in an aperture in the application face. Further, the “Cool Touch Applicator” and “Icy Touch Applicator” tips comprise metal or ceramic, respectively, and have a volume of at least about 300 millimeters<sup>3</sup> and at most about 700 millimeters<sup>3</sup>.

43. To the extent required, HCT Asia has complied with 35 U.S.C. § 287(a) with respect to the ’535 Patent. Further, as alleged below, Aptar received actual notice of the ’535 patent.

44. By at least February 25, 2016, HCT disclosed the existence of the ’535 Patent to Aptar and identified at least some of Aptar’s activities that infringe the ’535 Patent. Thus, Aptar has had knowledge of the ’535 Patent and that its activities infringe the ’535 Patent since at least February 25, 2016. Based on HCT’s disclosures, Aptar has also known or should have known since at least February 25, 2016 that its customers, distributors, and other purchasers of the Accused Products are infringing the ’535 Patent at least because Aptar has known that it is infringing the ’535 Patent.

45. On information and belief, Aptar has continued to make, use, offer for sale, and/or sell the Accused Products in the United States and/or import the Accused Products into the United States despite its knowledge of the ’535 Patent and its infringement of that patent. Aptar’s infringement has been and continues to be willful.

46. On information and belief, Aptar also actively, knowingly, and intentionally induces infringement of one or more claims of the ’535 Patent under 35 U.S.C. § 271(b) by actively encouraging others to make, use, offer to sell, sell, and/or import the Accused Products in this judicial district and elsewhere in the United States. For example, Aptar, through its sales

and distribution channels, encourages customers to sell, offer to sell, and/or import the Accused Products in the United States. *See, e.g.* Transcript of AptarGroup, Inc. Q1 2017 Earnings Conference Call, <https://www.nasdaq.com/aspx/call-transcript.aspx?StoryId=4066971&Title=aptargroup-s-atr-ceo-stephan-tanda-on-q1-2017-results-earnings-call-transcript> (last visited January 24, 2019) (“During the quarter, we participated in several global beauty product launches including Estée Lauder’s new revitalizing eye gel, global beauty – excuse me. Estée Lauder’s revitalizing eye gel, which features our Skin Master cool touch applicator.”).

47. On information and belief, Aptar also contributes to infringement of one or more claims of the ’535 Patent under 35 U.S.C. § 271(c) by (1) knowing that the Accused Products would be combined with other components to infringe the ’535 Patent and (2) knowing that the Accused Products have no substantial non-infringing use. For example, Aptar provides the Skin Master tips to René Furterer, which combines the Skin Master with its own dispensing components and then sells the complete product in the United States. On information and belief, Aptar does this knowing that the Skin Master is to be used in an infringing manner and that it has no substantial non-infringing use.

48. HCT Asia has suffered and continues to suffer damages as a result of Aptar’s infringement of the ’535 Patent.

### **COUNT III**

#### **INFRINGEMENT OF THE ’968 PATENT**

49. HCT Asia incorporates by reference the allegations set forth in paragraphs 1 through 48 as though fully set forth herein.

50. On information and belief, Aptar has infringed and continues to infringe, and/or has contributed to or induced the infringement of, one or more claims of the '968 Patent, including claim 1 and other claims that depend from claim 1, literally or under the doctrine of equivalents, by making, using, importing, selling, and/or offering to sell in the United States without authority or license the Accused Products in violation of 35 U.S.C. § 271.<sup>3</sup> For example, on information and belief, Aptar (an organization based in and having sales offices throughout the United States, including in this district) has at least marketed, demonstrated, sold, and/or offered to sell infringing Skin Master tips to at least ELC, which is headquartered in this district (New York, NY).

51. Claim 1 of the '968 Patent recites “a housing having a reservoir for containing a product.” The Accused Products include a housing having a reservoir for containing a product. For example, the Accused Products include a housing having a reservoir for containing, e.g., an eye gel or serum product.

52. Claim 1 of the '968 Patent recites “a thermal storage tip coupled to the housing, the thermal storage tip comprising a metal or a ceramic and a generally convex, disk-shaped body and having an application face for applying the product to a surface.” The Accused Products include a thermal storage tip coupled to the housing, the thermal storage tip comprising a metal or a ceramic and a generally convex, disk-shaped body and having an application face for applying the product to a surface. For example, the Accused Products include either a “Cool Touch Applicator” or “Icy Touch Applicator” tip coupled to the housing, and the tip comprises

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<sup>3</sup> HCT also seeks damages for any and all infringement related to international and/or foreign sales, to the extent permitted by applicable case law, for example, *WesternGeco LLC v. ION Geophysical Corp.*, 138 S. Ct. 2129 (2018), and other case law interpreting or applying same.



metal or ceramic, respectively. The tip has a generally convex, disk-shaped body and an application face for applying, e.g., eye gel or serum product to a surface.

53. Claim 1 of the '968 Patent recites “an insert disposed in the thermal storage tip, the insert defining a product delivery passageway in communication with the reservoir, the insert being truncated relative to the application surface of the thermal storage tip, the product delivery passageway extending through the thermal storage tip and terminating in an aperture in the application face.” The Accused Products include an insert disposed in the thermal storage tip, the insert defining a product delivery passageway in communication with the reservoir, the insert being truncated relative to the application surface of the thermal storage tip, the product delivery passageway extending through the thermal storage tip and terminating in an aperture in the application face. For example, the Accused Products include an insert disposed in the “Cool Touch Applicator” and “Icy Touch Applicator” tips, and the insert defines a delivery passageway for, e.g., an eye gel or serum product, in communication with the reservoir. The insert is truncated relative to the application surface of the tip, and the product delivery passageway extends through the tip and terminates in an aperture in the application face.

54. Claim 1 of the '968 Patent recites “wherein the thermal storage tip is fixed to the housing against movement relative to the housing.” The Accused Products include a thermal storage tip that is fixed to the housing against movement relative to the housing. For example, the Accused Products include either a “Cool Touch Applicator” or “Icy Touch Applicator” tip that is fixed to the housing against movement relative to the housing.

55. To the extent required, HCT Asia has complied with 35 U.S.C. § 287(a) with respect to the '968 Patent. Further, as alleged below, Aptar received actual notice of the '968 patent.

56. By at least February 25, 2016, HCT disclosed the existence of the '968 Patent to Aptar and identified at least some of Aptar's activities that infringe the '968 Patent. Thus, Aptar has had knowledge of the '968 Patent and that its activities infringe the '968 Patent since at least February 25, 2016. Based on HCT's disclosures, Aptar has also known or should have known since at least February 25, 2016 that its customers, distributors, and other purchasers of the Accused Products are infringing the '968 Patent at least because Aptar has known that it is infringing the '968 Patent.

57. On information and belief, Aptar has continued to make, use, offer for sale, and/or sell the Accused Products in the United States and/or import the Accused Products into the United States despite its knowledge of the '968 Patent and its infringement of that patent. Aptar's infringement has been and continues to be willful.

58. On information and belief, Aptar also actively, knowingly, and intentionally induces infringement of one or more claims of the '968 Patent under 35 U.S.C. § 271(b) by actively encouraging others to make, use, offer to sell, sell, and/or import the Accused Products in this judicial district and elsewhere in the United States. For example, Aptar, through its sales and distribution channels, encourages customers to sell, offer to sell, and/or import the Accused Products in the United States. *See, e.g.* Transcript of AptarGroup, Inc. Q1 2017 Earnings Conference Call, <https://www.nasdaq.com/aspx/call-transcript.aspx?StoryId=4066971&Title=aptargroup-s-atr-ceo-stephan-tanda-on-q1-2017-results-earnings-call-transcript> (last visited January 24, 2019) ("During the quarter, we participated in several global beauty product launches including Estée Lauder's new revitalizing eye gel, global beauty – excuse me. Estée Lauder's revitalizing eye gel, which features our Skin Master cool touch applicator.").

59. On information and belief, Aptar also contributes to infringement of one or more claims of the '968 Patent under 35 U.S.C. § 271(c) by (1) knowing that the Accused Products would be combined with other components to infringe the '968 Patent and (2) knowing that the Accused Products have no substantial non-infringing use. For example, Aptar provides the Skin Master tips to René Furterer, which combines the Skin Master with its own dispensing components and then sells the complete product in the United States. On information and belief, Aptar does this knowing that the Skin Master is to be used in an infringing manner and that it has no substantial non-infringing use.

60. HCT Asia has suffered and continues to suffer damages as a result of Aptar's infringement of the '968 Patent.

#### **COUNT IV**

#### **INFRINGEMENT OF THE '055 PATENT**

61. HCT Asia incorporates by reference the allegations set forth in paragraphs 1 through 60 as though fully set forth herein.

62. On information and belief, Aptar has infringed and continues to infringe, and/or has contributed to or induced the infringement of, one or more claims of the '055 Patent, including claim 1 and other claims that depend from claim 1, literally or under the doctrine of equivalents, by making, using, importing, selling, and/or offering to sell in the United States without authority or license the Accused Products in violation of 35 U.S.C. § 271.<sup>4</sup> For example, on information and belief, Aptar (an organization based in and having sales offices throughout the United States, including in this district) has at least marketed, demonstrated, sold, and/or

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<sup>4</sup> HCT also seeks damages for any and all infringement related to international and/or foreign sales, to the extent permitted by applicable case law, for example, *WesternGeco LLC v. ION Geophysical Corp.*, 138 S. Ct. 2129 (2018), and other case law interpreting or applying same.

offered to sell infringing Skin Master tips to at least ELC, which is headquartered in this district (New York, NY).

63. Claim 1 of the '055 Patent recites “a housing having a reservoir configured to contain the product.” The Accused Products include a housing having a reservoir configured to contain the product. For example, the Accused Products include a housing having a reservoir configured to contain, e.g., an eye gel or serum product.

64. Claim 1 of the '055 Patent recites “a thermal storage tip coupled to the housing, the thermal storage tip comprising a metal or ceramic material, and comprising a convex application face for applying the product to a surface.” The Accused Products include a thermal storage tip coupled to the housing, the thermal storage tip comprising a metal or ceramic material, and comprising a convex application face for applying the product to a surface. For example, the Accused Products can include either a “Cool Touch Applicator” or “Icy Touch Applicator” tip coupled to the housing, and the tip comprises metal or ceramic, respectively. The tip comprises a convex application face for applying, e.g., an eye gel or serum product, to a surface.

65. Claim 1 of the '055 Patent recites “an insert disposed within the thermal storage tip, the insert defining a product delivery passageway in communication with the reservoir, the insert being truncated relative to the application face of the thermal storage tip, the product delivery passageway extending through the thermal storage tip and terminating in an aperture in the application face.” The Accused Products include an insert disposed within the thermal storage tip, the insert defining a product delivery passageway in communication with the reservoir, the insert being truncated relative to the application face of the thermal storage tip, the product delivery passageway extending through the thermal storage tip and terminating in an

aperture in the application face. For example, the Accused Products include an insert disposed in the “Cool Touch Applicator” and “Icy Touch Applicator” tips, and the insert defines a delivery passageway for, e.g., an eye gel or serum product, in communication with the reservoir. The insert is truncated relative to the application face of the tips, and the product delivery passageway extends through the tips and terminates in an aperture in the application face.

66. Claim 1 of the ’055 Patent recites “wherein the convex application face is angled relative to an axis extending through the center of the product delivery passageway.” The Accused Products include a convex application face that is angled relative to an axis extending through the center of the product delivery passageway. For example, the “Cool Touch Applicator” and “Icy Touch Applicator” tips include a convex application face that are angled relative to an axis extending through the center of the delivery passageway for, e.g., eye gel or serum products.

67. To the extent required, HCT Asia has complied with 35 U.S.C. § 287(a) with respect to the ’055 Patent. Further, as alleged below, Aptar received actual notice of the ’055 patent.

68. By at least February 25, 2016, HCT disclosed the existence of the ’055 Patent to Aptar and identified at least some of Aptar’s activities that infringe the ’055 Patent. Thus, Aptar has had knowledge of the ’055 Patent and that its activities infringe the ’055 Patent since at least February 25, 2016. Based on HCT’s disclosures, Aptar has also known or should have known since at least February 25, 2016 that its customers, distributors, and other purchasers of the Accused Products are infringing the ’055 Patent at least because Aptar has known that it is infringing the ’055 Patent.

69. On information and belief, Aptar has continued to make, use, offer for sale, and/or sell the Accused Products in the United States and/or import the Accused Products into the United States despite its knowledge of the '055 Patent and its infringement of that patent. Aptar's infringement has been and continues to be willful.

70. On information and belief, Aptar also actively, knowingly, and intentionally induces infringement of one or more claims of the '055 Patent under 35 U.S.C. § 271(b) by actively encouraging others to make, use, offer to sell, sell, and/or import the Accused Products in this judicial district and elsewhere in the United States. For example, Aptar, through its sales and distribution channels, encourages customers to sell, offer to sell, and/or import the Accused Products in the United States. *See, e.g.* Transcript of AptarGroup, Inc. Q1 2017 Earnings Conference Call, <https://www.nasdaq.com/aspx/call-transcript.aspx?StoryId=4066971&Title=aptargroup-s-atr-ceo-stephan-tanda-on-q1-2017-results-earnings-call-transcript> (last visited January 24, 2019) ("During the quarter, we participated in several global beauty product launches including Estée Lauder's new revitalizing eye gel, global beauty – excuse me. Estée Lauder's revitalizing eye gel, which features our Skin Master cool touch applicator.").

71. On information and belief, Aptar also contributes to infringement of one or more claims of the '055 Patent under 35 U.S.C. § 271(c) by (1) knowing that the Accused Products would be combined with other components to infringe the '055 Patent and (2) knowing that the Accused Products have no substantial non-infringing use. For example, Aptar provides the Skin Master tips to René Furterer, which combines the Skin Master with its own dispensing components and then sells the complete product in the United States. On information and belief,

Aptar does this knowing that the Skin Master is to be used in an infringing manner and that it has no substantial non-infringing use.

72. HCT Asia has suffered and continues to suffer damages as a result of Aptar's infringement of the '055 Patent.

**PRAYER FOR RELIEF**

WHEREFORE, HCT Asia respectfully prays for relief as follows:

- (a) Judgment that Aptar is liable for infringement and/or inducing or contributing to the infringement of one or more claims of each of the Asserted Patents;
- (b) Judgment that Aptar has willfully infringed each of the Asserted Patents;
- (c) Compensatory damages in an amount according to proof, including lost profits, and, in any event, no less than a reasonable royalty;
- (d) Enhanced damages for willful infringement pursuant to 35 U.S.C. § 284;
- (e) Pre-judgment interest;
- (f) Post-judgment interest;
- (g) Attorneys' fees based on this being an exceptional case pursuant to 35 U.S.C. § 285, including pre-judgment interest on such fees;
- (h) An Order permanently enjoining Aptar and its respective officers, agents, employees, customers, and those acting in privity with them, from further infringement, including contributory infringement and/or inducing infringement, of the Asserted Patents;
- (i) An accounting and/or supplemental damages for all damages occurring after any discovery cutoff and through final judgment;
- (j) Costs and expenses in this action; and
- (k) Any further relief that the Court deems just and proper.

Dated: March 29, 2019

By: /s/ Anthony G. Beasley

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**DEMAND FOR JURY TRIAL**

HCT Asia demands a jury trial as to all issues that are triable by a jury in this action.

Dated: March 29, 2019

By: /s/ Anthony G. Beasley

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