

UNITED STATES PATENT AND TRADEMARK
OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

QUASAR SCIENCE LLC

Petitioner,

v.

COLT INTERNATIONAL CLOTHING, INC. d/b/a COLT LED

Patent Owner.

Case: IPR2023-00611
U.S. Patent No. 10,197,224

**PATENT OWNER'S MISCELLANEOUS MOTION FOR
ADDITIONAL DISCOVERY UNDER 37 C.F.R. § 42.51(b)(2)**

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PATENT OWNER’S EXHIBIT LIST

Exhibit No.	Exhibit Description
2008	Patent Owner Colt’s Interrogatories
2009	Declaration of David L. Hoffman
2010	Complaint filed February 17, 2022 against Petitioner Quasar Science LLC (and others) for patent infringement, Case No. 1:22-cv-00213 (Dist. Del.)(“Complaint”)
2011	First Amended Complaint filed June 1, 2022 in Case No. 1:22-cv-00213 (Dist. Del.)(“FAC”)
2012	Docket sheet for Case No. 1:22-cv-00213 (Dist. Del.)(“Litigation Docket”)
2013	Protective Order in Case No. 1:22-cv-00213 (Dist. Del.)(“Protective Order”)
2014	Colt’s Initial Infringement Contentions cover document and excerpts re ‘582 Patent (“Infringement Contentions”)
2015	Declaration of Zhang, Ya Jun (“Zhang Decl.”)
2016	Marketing Material from Petitioner Quasar’s website at https://www.quasarscience.com/products/rainbow concerning the Rainbow model, downloaded November 17, 2023
2017	Marketing Material from Petitioner Quasar’s online marketing downloaded from https://cdn.shopify.com/s/files/1/0903/0580/files/QS_RR-R2_One-Sheet.pdf concerning the Rainbow 2 model downloaded November 17, 2023
2018	Marketing Material from https://rstvisions.com/products/quasar-q-led-2-r-rainbow-linear-rgbx printed on November 17, 2023
2019	The Vitec Group plc Acquisitions and Trading Update dated April 12, 2019 from Videndum plc’s website at www.Videndum.com

2020	Vitec Group PLC entitled “The Vitec Group plc 2021 Full Year Results” dated March 1, 2022 from https://files.q4europe.com/news-pdf/3294/VitecGroup_15348316.pdf (“Vitec 2021 Report”)
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I. INTRODUCTION

On November 17, 2023, the Board determined during the initial conference call that a motion for additional discovery under 37 C.F.R. §42.51(b)(2) was warranted. Accordingly, Patent Owner Colt International Clothing, Inc. (“COLT”) moves to require Petitioner Quasar Science LLC (a Delaware LLC) (“Petitioner QUASAR”) to answer interrogatories (“ROGs”) in Ex. 2022. The six ROGs seek evidence of commercial success, namely sales, rental revenue and market share of Petitioner QUASAR and its predecessor Quasar Science LLC (a California LLC) by practicing the patented inventions, which information is nonpublic, within the control of Petitioner and readily accessible by Petitioner QUASAR.

II. FACTUAL AND PROCEDURAL BACKGROUND

On February 17, 2022, COLT filed a Complaint (Ex. 2010) against Petitioner QUASAR (and others) for patent infringement, Case No. 1:22-cv-00213 (Dist. Del.) (“Lawsuit”). “Hoffman Decl.” Ex. 2009, ¶2. A First Amended Complaint (“FAC”, Ex. 2011) was filed on June 1, 2022. (Ex. 2009, ¶3.)

While COLT served discovery related to sales in the Lawsuit, Petitioner QUASAR objected. Ex. 2012, “Litigation Docket,” entry #98 at PDF15 and see Ex. 2009, ¶4. To the extent any sales information was produced, it was produced under a protective order and **cannot** be used for any purpose other than the Lawsuit. Ex. 2013, Protective Order, §5.a. at PDF9; Ex. 2009, ¶5.

The Lawsuit accuses Petitioner QUASAR of infringing U.S. Patent No. 10,197,224 (“’224 Patent”)(Ex. 1001) through its commercialization of various bicolor (selectable use of warm white and cool white) LED lighting tubes each with high quality of light output to be suitable for use in commercial image recording (TV and studio filming). Petitioner QUASAR (and/or its predecessor Quasar Science LLC (a California LLC, “Old Quasar”) calls this group of products Rainbow models.

The FAC asserts that the Rainbow models infringe at least claims 1, 3, 4, 7-13, 23, 25, 26, 28-39, 41, and 43-45 of the ‘224 Patent. (FAC, Ex. 2011, ¶109 at PDF26). Colt’s Initial Infringement Contentions served in the Lawsuit have claim charts showing infringement of each of the asserted ‘224 Patent claims by Petitioner QUASAR’s (and Old Quasar’s) “Rainbow Lights.” Ex. 2014 at PDF4-40, and Ex. 2009, ¶6. The model numbers of specific Rainbow Lights are shown on the first page (Ex. 2014 at PDF4) of the charts.

Petitioner QUASAR requested and the Board instituted trial on the same claims. See Institution Decision, Paper No. 10, p. 6 listing grounds under 35 U.S.C. §103. Accordingly, trial will solely be on obviousness under §103 based on two combinations of references. Anticipation is not at issue.

COLT’s Patent Owner’s Response is due January 11, 2024.

III. ARGUMENT

Discovery in *inter partes* proceedings is available for “what is otherwise

necessary in the interest of justice.” 35 U.S.C. § 316(a)(5) *see also* 37 C.F.R. §42.51(b)(2) (same). The Board has identified five factors that are important to establish the “necessary and interest of justice” standard. *See Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper No. 26 at 6-7 (P.T.A.B. Mar. 5, 2013). These are: (i) there is more than a possibility and a mere allegation that useful information will be discovered; (ii) the proposed discovery does not seek legal positions or the underlying basis for a legal position; (iii) the requested information is not available through other means; (iv) any instructions associated with the discovery are easily understandable; and (v) the discovery is not overly burdensome to answer. *Id.*

A. More than a Possibility and Mere Allegation

“[T]he essence of Factor (1)” is that the “requester of information should already be in possession of a threshold amount of evidence or reasoning tending to show beyond speculation that something useful will be uncovered.” *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper No. 26 at 7 (P.T.A.B. Mar. 5, 2013). The Board has defined “useful” as “favorable in substantive value to a contention of the party moving for discovery.” *Id.*

COLT meets this factor because COLT has prepared claim charts showing that the Rainbow (including the Rainbow 2) products practice claims of the ’224 Patent (Ex. 2014, Infringement Contentions, PDF4-40). Showing that the product

itself is coextensive with the claim language shows nexus (*see Garmin, at 8*).

Petitioner QUASAR's Rainbow series was born by copying Patent Owner Colt's multicolored light embodying the claimed invention. Specifically, Old Quasar had a manufacturer Mr. Zhang of Laysion copy it. Ex. 2015, Declaration of Mr. Zhang, ¶5 ("I also duplicated Colt Led color tube for Quasar...." and Ex. 2009, ¶7. *Kinetic Concepts, Inc. v. Smith 7 Nephew, Inc.*, 668 F.3d 1342, 1370 (Fed. Cir. 2012) (copying of "the system" covered by the patent relevant, not just copying of the patent itself). Old Quasar had also previously had Mr. Zhang copy another of Colt's products, the bicolor tubular luminaire. Ex. 2015, ¶s1-4.

In addition to copying showing nexus, marketing materials for Petitioner QUASAR's and its predecessor Old Quasar's Rainbow models promote patented features which are novel. A novel combination of the '224 Patent includes the below elements (using element numbering of the Petition's Claim Appendix (Petition, pp. ix-x):

1[pre] An LED lighting device configured for providing light suitable for a commercial image recording, the LED lighting device comprising:

1[c] an array of LED emitting devices...configured to emit five different colors...: a first set of LED emitting elements configured to emit light of a first color; a second set of LED emitting elements configured to emit light of a second color; a third set of LED emitting elements configured to emit light of a third color; a

fourth set of LED emitting elements configured to emit light of a fourth color; and a fifth set of LED emitting elements configured to emit a broad-spectrum white light within a predetermined Kelvin temperature range

1[e] recites “an LED driver ... configured to selectively provide electrical power to the array of LED emitting devices

1[f] wherein the housing has a linear form factor substantially that of a fluorescent tube having an axial direction and having a diameter of no greater than about 41 mm....”

Ex. 1001 at claim 1; Petition at ix-x.

Petitioner Quasar’s marketing materials promote the Rainbow models with a combination of warm LEDs and cool LEDs (“Candlelight diode (2000K) and Daylight diode (600K)” and “RGB: A rainbow of color at your finger tips [having] a full 360° palette” Ex. 2016 at PDF2, first and second paragraphs under “Features.” The photo on the first page shows that it is a tubular luminaire. Ex. 2016 at PDF1.

The Rainbow 2 is similar. Ex. 2017 at PDF1 (“R2” model is the Rainbow 2). It is a tubular luminaire with “Highly accurate white light... CRI up to 95.” (Ex. 2017 PDF1, bottom left). The light produces “intense, high quality tunable white light or rich saturated RGB color [and] Rainbow 2 (R2) ... will become the workhorses of your set.” Ex. 2017 at PDF1 (first paragraph). The light is clearly promoted as having at least five color LEDs, at least one of which is white producing many colors suitable for commercial image recording. The section called “Color

Science” promotes the “RGBX” (red, green, blue, and “X” stands for one cool white LED and one warm white/amber LED). See, Ex. 2016 at PDF2 (“X-fade White Light: Crossfading our Candlelight diode (2000K) and Daylight diode (6000K)...”); also Ex. 2017 at PDF3 in the “Color Science” section re RGBX producing “more than one billion colors.”

Important elements of dependent claims in the ‘224 Patent are also present and promoted by Petitioner QUASAR for the Rainbow series. Dependent claims 3 and 4 of the ‘224 Patent recite producing “at least 255 different colors” and “at least 255 different colors of an entertainment industry color wheel,” respectively. ‘224 Patent, claims 3 and 4. Petitioner Quasar’s marketing materials promote the Rainbow as providing many different colors including the full 360° palette: “RGB: A rainbow of color at your finger tips [having] a full 360° palette” Ex. 2016 at PDF2, first and second paragraphs under “Features.” To obtain at least the 255 colors of the color wheel in a tubular luminaire makes the light very useful and adaptable for the TV and film industry. See, Ex. 1001, Col. 7, lines 19-27.

Dependent claim 11 recites that the lighting device produces “white light in each of daylight and tungsten temperature ranges.” Ex. 1001, claim 11. This enables versatile use in the tubular lighting device in the commercial image recording industry as scenes are commonly shot in either daylight (cool) or tungsten (warm) which makes it very quick and easy to change lighting for different TV or movie

scenes. See ‘224 Patent, Ex. 1001, e.g., Col. 2, lines 1-16.

Petitioner Quasar’s marketing materials promote the Rainbow models ability to produce warm (tungsten) white and cool (daylight) white: “Candlelight diode (2000K) and Daylight diode (6000K)....” Ex. 2016 at PDF2, first paragraph under “Features.” This marketing emphasizes the importance and desirability of producing tungsten and daylight white from the same tubular luminaire.

The ‘224 Patent claims 1 and 3-4 (among others) the above novel combinations of elements. Such combinations are absent from the applied prior art and from any single reference thereof.

The only prior art identified by Petitioner QUASAR as primary references, Kit and Mueller. The Board found that Kit did not teach use of white LEDs in combination with colored LEDs. See, Institution Decision, Paper #10, pp. 17-18.

For Mueller, Petitioner only asserted a combination of references under 35 USC 103 which included Mueller. See Institution Decision, p. 6. Moreover, with respect to dependent claims 3 and 4, Mueller fails to disclose the 255 colors/color wheel, and with respect to dependent claim 11, Mueller fails to disclose warm and cool white LEDs and output modes from the light.

To show nonobviousness based on commercial success, the record must show a sufficient nexus between this commercial success and the patented invention. *Crocs, Inc. v. ITC*, 598 F.3d 1294, 1311 (Fed. Cir. 2010) (reversing a determination

that a footwear product patent was obvious on the grounds that commercial success evidence with a sufficient nexus to the claimed invention was demonstrated). Given the nature of Petitioner QUASAR's infringement, which is co-extensive with its S-Switch models, nexus is presumed. *Demaco Corp. v. F. Von Langsdorff Licensing Ltd.*, 851 F.2d 1387, 1392-93 (Fed. Cir. 1988); *see also Brown & Williamson Tobacco Corp. v. Philip Morris, Inc.*, 229 F.3d 1120, 1130 (Fed. Cir. 2000) (“[I]f the marketed product embodies the claimed features, and is coextensive with them, then a nexus is presumed and the burden shifts to the party asserting obviousness to present evidence to rebut the presumed nexus.”).

B. No Litigation Positions Sought and No Underlying Basis Sought

The discovery requested does not seek a litigation basis for any position taken by Petitioner QUASAR in this IPR nor in the Litigation between the parties. It just seeks sales, rental revenues and market share.

C. No Ability to Generate Equivalent Information by Other Means

COLT has no ability to generate the requested information by any other means. The information regarding sales, quantities and market share determinations is solely in Petitioner QUASAR's possession. The general revenue numbers available for 2019 to 2021 for Old Quasar and Petitioner QUASAR set forth in Exs. 2019 and 2020 of \$7.7 million, \$3.5 million and roughly \$3 million in 2021 do not provide any breakdown by model or product. There is no publicly available data with a breakdown

by type of product to show sales of the Rainbow models.

D. Easily Understandable Instructions

A review of the proposed additional discovery requests (Ex. 2008) the instructions for the ROGs are short, simple and clear.

E. Requests Not Overly Burdensome to Answer

During the conference with the Board, Patent Owner intended to serve document requests and interrogatories. The Board cautioned Patent Owner generally that parties trip up asking for too much. Patent Owner is only asking for six interrogatories now. The ROGs are short and focused upon information that should be easily locatable by Petitioner QUASAR (and can be responded to, under the FRCP in documents, if the requested information is readily discernable). Petitioner QUASAR's attorneys should have issued litigation hold instructions to Petitioner QUASAR. Petitioner QUASAR is owned by a publicly traded company Videndum that issues reports like that of Ex. 2020 with financials and issued a press release about Old Quasar's financials. Therefore, Petitioner QUASAR and its parent, real party in interest Videndum, would be expected to have detailed financials. If they don't have it, then that would be the response. See Instruction No. 2 on Ex. 2008 which provides alternatives in the event of limited or lack of information.

With respect to Petitioner QUASAR, the ROGs merely seek sales, rentals and market share for 2021, 2022 and 2023. These numbers should be readily accessible.

With respect to the information regarding sales, rentals and market share for Old Quasar (ROGs 4 to 6), that information would undoubtedly have been part of a due diligence when Petitioner QUASAR, a subsidiary of a publicly traded company Videndum plc, was acquiring Old Quasar, particularly since the acquisition was for a value up to \$6.1 million. Ex. 2019. As noted above, Videndum plc stated that Old Quasar had revenue numbers in 2019 and 2020 of \$7.7 million and \$3.5 million, respectively. Ex. 2019. Moreover, Videndum plc made financial projections for 2021 based at least in part on financial information obtained from Old Quasar. Ex. 2020 at PDF 35 (see chart above “Audix” section).

IV. CONCLUSION

“Objective indicia can be the most probative evidence of nonobviousness in the record.” *Crocs, Inc. v. ITC*, 598 F.3d 1294, 1310 (Fed. Cir. 2010). For the foregoing reasons, COLT respectfully requests leave to serve the discovery on Petitioner QUASAR embodied in Exhibit 2008.

Date: November 18, 2023

Respectfully submitted,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **PATENT OWNER'S MISCELLANEOUS MOTION FOR ADDITIONAL DISCOVERY UNDER 37 C.F.R. § 42.51(b)(2)** was served on November 18, 2023, via email directed to counsel of record for Petitioner at the following:

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