

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

**PETITIONER'S OPPOSITION TO
PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY**

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Kamada, Ltd. v. Grifols Therapeutics Inc.,
IPR2014-00899, Paper 22 6

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Rules

37 C.F.R. § 42.51(b)(2)(i).....1

LISTING OF EXHIBITS

Exhibit No.	Exhibit Description
1001	U.S. Patent No. 10,197,224 to Macias <i>et al.</i> (“the ’224 Patent”)
1002	File History of the U.S. Patent No. 10,197,224 (“the File History”)
1003	Declaration of Fred Holmes (“Holmes Decl.”)
1004	U.S. Patent No. 7,507,001 to Kit (“Kit”)
1005	U.S. Patent No. 7,350,936 to Ducharme <i>et al.</i> (“Ducharme”)
1006	U.S. Patent Publication 2005/0047134 to Mueller (“Mueller”)
1007	U.S. Patent No. 8,026,532 to Ansems (“Ansems”)
1008	U.S. Publication No. 2010/0102960 to Ivey <i>et al.</i> (“Ivey”)
1009	U.S. Patent No. 8,668,361 to Hasnain (“Hasnain”)
1010	U.S. Publication No. 2010/0102729 to Katzir <i>et al.</i> (“Katzir”)
1011	“When white light isn’t white” by Mike Wood, 2008
1012	U.S. Publication No. 2004/0052076 to Mueller <i>et al.</i> (“Mueller ’076”)
1013	International Publication No. 2005/012997 to Morgan <i>et al.</i> (“Morgan”)
1014	U.S. Publication No. 2010/0315001 to Domagala <i>et al.</i> (“Domagala”)
1015	U.S. Patent. No. 7,049,761 to Timmermans <i>et al.</i> (“Timmermans”)
1016	Astera LED-Technology User Manual Wireless Pixel Tube (AL1) v.3.2.20 (July 23, 2010)
1017	Declaration of K. Gottuso in support of Petitioner’s Objection to Evidence
1018	October 26, 2023 Email from Hoffman to MBGW Law and Craig Bailey
1019	Email thread between Petitioner and Patent Owner regarding Patent Owner’s Motion for Additional Discovery

Patent Owner’s Motion for Additional Discovery (Paper 18, “Motion”) fails to show the requested “discovery is in the interests of justice.” 37 C.F.R. § 42.51(b)(2)(i). Patent Owner proposes six (6) interrogatories which it contends seek “evidence of commercial success, namely sales, rental revenue and market share...” Motion at 1. Significantly, Patent Owner seeks this information not only as related to Petitioner, but also as to a separate, unrelated entity—Quasar Science LLC (a still existing California LLC) (hereinafter, “Q-California”)—from whom Petitioner purchased limited assets in 2021. *Id.* Patent Owner is well aware Q-California is not a party to this proceeding, not a party to the District Court litigation brought by Patent Owner, and not an entity over which Petitioner has access or control. Indeed, on October 26, 2023, Patent Owner’s counsel sent an email to Q-California’s counsel requesting it accept service of a new complaint Patent Owner seeks to bring in California against Q-California. Exhibit 1018. The Motion is silent on this point and is conspicuously absent evidence supporting Patent Owner’s conclusory allegation that the information sought by the proposed additional discovery related to Q-California is “within the control of Petitioner and readily accessible by Petitioner.” Motion at 1.

Patent Owner’s Motion for additional discovery should be denied.

A. Agreement to Limited Additional Discovery Following Meet and Confer

During the parties’ November 27, 2023 meet-and-confer, Petitioner reiterated

that Petitioner and Q-California are unrelated, unaffiliated, and wholly separate entities. Petitioner further advised that while it has information related to its own annual revenues from sales and rentals of its own products (responsive to ROGs 1-2), it lacks information related to overall share or percentage of market as sought by ROG No. 3. Additionally, Petitioner advised that while limited information related to Q-California may have been represented to Petitioner at the time of its purchase of assets from that entity in 2021, Petitioner does not have information in its possession necessary to answer and certify the requests of ROGs 4-6. Exhibit 1019.

Petitioner maintains that Patent Owner cannot meet its burden showing it should be allowed to seek additional discovery, however, in the interest of compromise, Petitioner agreed to provide answers to ROGs 1, 2, and 3. In doing so, however, Petitioner maintains its objection that the discovery sought by ROGs 1-3 does not support, and is not evidence of, commercial success. As for ROG 3, Patent Owner accepted that Petitioner has no information related to overall share or percentage of market, which Petitioner will indicate in its response. Additionally, Patent Owner agreed to withdraw ROG 6. Exhibit 1019. The parties also discussed, via email, the need for a protective order before confidential information is shared, and will work together to agree upon a protective order for the Board's consideration. *Id.*

Despite the parties' compromise to limit the scope of additional discovery,

Patent Owner maintains its Motion as to proposed ROGs 4 and 5, which request that Petitioner state Q-California's annual revenues from sales and rentals of Petitioner Quasar's Rainbow Lights for each of the years 2017 to 2021. Ex. 2008 at 4-5.

B. Proposed ROGs 4 and 5 Do Not Satisfy the *Garmin* Factors.

I. Factor 1: The Motion Fails to Show “More Than a Mere Possibility and Mere Allegation” That Something Useful Will Be Found.

Patent Owner seeks additional discovery to support its assertion of commercial success, and in an attempt to support its required showing of a nexus between the claimed invention and its proposed discovery requests, Patent Owner directs this Court to claim charts it prepared (Ex. 2014, PDF4-40), as well as a Declaration of Mr. Zhang (Ex. 2015, ¶5) wherein he indicates he “duplicated Colt Led color tube for [Q-California].”

Patent Owner, however, fails to establish the necessary nexus (*i.e.*, fails to make a sufficient threshold showing that the information requested from Petitioner in ROGs 4 and 5—specifically Q-California's annual revenues from sales and rentals—are attributable to units the sales or rentals of which are due to an inventive feature claimed by Patent Owner). *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper No. 26 at 8, 9 (P.T.A.B. Mar. 5, 2013). “To show how commercial success supports non-obviousness, however, Patent Owner must prove that the sales were a direct result of the unique characteristics of the invention, and not a result of economic and commercial factors unrelated to the quality of the

patented subject matter.” *Qualtrics, LLC. v. OpinionLab, Inc.*, IPR2014-00421, Paper 42, at 30-31 (P.T.A.B. July 24, 2015). Patent Owner’s Motion fails to address and does not account for the presence of other potentially desirable features implemented on the same units for which sales and pricing information are requested. Motion, *generally*. Patent Owner does not even represent that the products for which revenue of sales and rentals are requested do not embody significant and desirable features not recited in Patent Owner’s claims. *Id.*

While the Motion alleges its claim charts “show[] the product itself is coextensive with the claim language,” (Motion at 3-4) (which Petitioner strongly disagrees with), the Motion fails to explain how the claim limitations are related to the alleged commercial success other than simply alleging that the limitations are present in its product. *Id.*, *generally*; *see also Qualtrics*, IPR2014-00421, Paper 42, at 30-31 (“Patent Owner provides examples of the database and reporting module features of its product and discusses use of various features by its customers, but does not attempt to tie any of these features to the alleged commercial success.”). Notably, the Rainbow and Rainbow 2 products for which information is sought embody significant and desirable features *not* recited in Patent Owner’s claims. Such features include, for example, having “built in Lumen Radio CRMX chip for wireless control,” an “OLED screen with digital interface [] giving you command of Intensity, Kelvin, Hue & Saturation,” “onboard effects with adjustable

parameters[, i]ncluding Fire, Police Light, Short Circuit, Paparazzi, Strobe and Rainbow Color Scroll,” and the ability to “be wired to DMX via Cat5 I/O Port.” www.quasarscience.com/products/rainbow; www.quasarscience.com/products/rainbow-2; Exs. 2016-2018. Additionally, the Rainbow 2 includes, for example, an “Integrated Ossium Mounting System (OMS) [which] allows for rigging in ways previously unobtainable,” a phone application available on the Apple® App Store to allow the user to “[c]onnect wirelessly and create custom lighting designs with the starCTRL app,” and “advanced networking architecture solutions and scalable options [] [w]ith no need for additional data boxes, receivers or transmitters.” www.quasarscience.com/products/rainbow-2; Exs. 2017-2018. To the extent these products are considered a commercial success, it is contributable or caused in substantial part, to one or more of these other factors, as opposed to merely correlated with any unique characteristic of the generic patent claims. *Qualtrics*, IPR2014-00421, Paper 42, at 30-31. Without showing a nexus between the purported commercial success and the patented features, the proposed discovery fails to satisfy *Garmin* Factor 1. *In re Huang*, 100 F.3d 135, 140 (Fed. Cir. 1996) (failure to establish nexus absent showing that “the sales were a direct result of the unique characteristics of the claimed invention—as opposed to other economic and commercial factors unrelated to the quality of the patented subject matter.”).

Additionally, Patent Owner fails to present evidence or reasoning to show

beyond speculation that Petitioner (or Q-California) copied from Patent Owner. The Declaration of Mr. Zhang establishes, at best, that Mr. Zhang “duplicated” an unidentified “Colt Led color tube” for persons he believes were affiliated with Q-California at some unknown date and time, without any specificity as to the product that was purportedly duplicated or how that product reads on the ‘224 patent. Ex. 2015, ¶5. “Copying as objective evidence of nonobviousness requires evidence of effort to replicate *a specific product*.” *Garmin*, IPR2012-00001, Paper No. 26 at 12, *citing Wyers v. Master Lock Co.*, 616 F.3d 1231, 1246 (Fed. Cir. 2010) (emphasis added). Even taking the Zhang Declaration as true, there is no indication as to what product was being copied, whether that product is being sold by Petitioner, or whether the purportedly copied product is covered by any claim of the ‘224 patent or even accused in the underlying litigation or claim charts submitted to the Board.

Further, the Motion and Zhang Declaration offer mere insinuation that the Rainbow or Rainbow 2 series are duplications of the “Colt LED color tube” referenced in the Zhang Declaration and lack any support for the assertion that the “Colt LED color tube” was itself an embodiment of the patent. *Kamada, Ltd. v. Grifols Therapeutics Inc.*, IPR2014-00899, Paper 22, at 4 (P.T.A.B. Mar. 4, 2015) (“Patent Owner . . . failed to present any evidence or reasoning tending to show beyond speculation that, even if there were evidence of copying, a nexus exists between Petitioner’s alleged copying and the claimed invention of the [] patent.”).

Patent Owner cannot show Petitioner copied from Patent Owner, and the Zhang Declaration is absent evidence showing the required nexus for commercial success.

Even if Patent Owner's evidence supported a presumption of a nexus between the claimed invention and the ROGs seeking information related to Petitioner's sales and rentals (which they do not), Patent Owner still fails to provide anything more than a mere possibility that something useful will be found as related to Q-California. "[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*, IPR2012-00001, Paper No. 26 at 7 (emphasis added). Patent Owner offers no evidence or sufficient reasoning tending to show beyond speculation that Petitioner has the requested information related to Q-California's annual revenues from sales and rentals of Petitioner Quasar's Rainbow Lights for each of the years 2017 to 2021, but rather, it asserts without any support, that the information sought by the proposed additional discovery as related to Q-California is "within the control of Petitioner and readily accessible by Petitioner." Motion at 1. In contrast to information it seeks related to Petitioner (which it alleges is "readily accessible" to Petitioner), Patent Owner speculates that the "information [related to Q-California] would undoubtedly have been part of a due diligence" when Petitioner purchased assets from Q-California. *Id.* at 1, 10. "The mere possibility of finding something useful, and mere allegation

that something useful will be found, are insufficient to demonstrate that the requested discovery is necessary in the interest of justice.” *Garmin*, IPR2012-00001, Paper 26 at 6. While limited information related to Q-California may have been represented to Petitioner at the time of the asset purchase in 2021, Petitioner does not have information in its possession, custody, or control necessary to answer the requests of ROGs 4 and 5 with any level of reliability or certifiable accuracy.

II. Factor 2: Patent Owner Impermissibly Seeks to Alter the Board’s Trial Procedures.

Patent Owner asserts that its requests are “short and focused upon information that *should be* easily locatable by Petitioner.” Motion at 9 (emphasis added). However, ROGs 4 and 5 extend far beyond the limited discovery normally permitted in IPR’s, which is designed to “lower[] the cost, minimize[] the complexity, and shorten[] the period required for dispute resolution.” *Garmin*, IPR2012-00001, Paper 26 at 5. Patent Owner attempts to turn the PTAB’s tailored discovery process into one akin to district court litigation, seeking third-party information. And it does so based on mere speculation. Motion at 10 (“information would undoubtedly have been part of a due diligence”). This factor weighs against Patent Owner’s Motion.

III. Factor 3: Patent Owner Has the Ability to Generate Equivalent Information by Other Means.

Undermining the Motion further is Patent Owner’s misapplication of Factor 3. The Motion incorrectly re-writes Factor 3 as “[Patent Owner has no] ability to generate

the requested information by any other means.” Motion at 8. Patent Owner has not shown that it lacks the ability to “[g]enerate **[e]quivalent** [i]nformation [b]y [o]ther [m]eans” to support its assertion of commercial success. *Garmin*, IPR2012-00001, Paper 26 at 6. For instance, it could present evidence of the commercial success of its own products (if such success exists) or request the information directly from Q-California. This factor weighs against Patent Owner.

IV. Factor 4: ROGs 4 and 5 Are Not Easily Understandable.

ROGs 4 and 5 are unintelligible where Patent Owner requests that Petitioner state *Q-California’s* annual revenues from sales and rentals of *Petitioner Quasar’s Rainbow Lights* for years 2017 to 2021. Ex. 2008 at 4-5. Due to the confusion inherent in these ROGs, the answer must be that Q-California’s annual revenue from sales and rentals of Petitioner Quasar’s Rainbow Lights for years 2017 to 2021 was zero, as Q-California cannot have sold Petitioner Quasar’s Rainbow Lights during the years indicated since neither Petitioner nor Petitioner Quasar’s Rainbow Lights existed in the years 2017 to 2021. This factor weighs against Patent Owner.

IV. Factor 5: The Proposed Additional Discovery is Overly Burdensome.

The proposed discovery is overly burdensome and is neither sensible nor responsibly tailored. *Garmin*, IPR2012-00001, Paper 26 at 7. Patent Owner was advised that while limited information related to Q-California may have been disclosed to Petitioner at the time of the asset purchase in 2021, Petitioner does not

have information in its possession, custody, or control necessary to answer the particular requests of ROGs 4 and 5 with any level of reliability or certifiable accuracy. Nevertheless, Patent Owner maintains, without evidence, that “information [related to Q-California] would undoubtedly have been part of a due diligence” when Petitioner purchased assets from Q-California. Motion at 10.

Patent Owner’s requests are overly burdensome, because the only way Petitioner can answer the requests of ROGs 4 and 5 with any level of reliability or certifiable accuracy is to seek to obtain the information from non-party Q-California. Notably, in light of Patent Owner’s recent advisement of its intent to file a patent infringement action against Q-California, it is exceedingly unlikely that Q-California will voluntarily share information related to its revenue from sales and rentals of products which are presumably the subject of Patent Owner’s planned litigation against it. Because the requested information is not within Petitioner’s possession, custody, or control, attempting to respond to ROGs 4 and 5 would be unduly burdensome and therefore the requests do not satisfy *Garmin* Factor 5.

C. CONCLUSION

For the foregoing reasons, the Board should deny the proposed additional discovery, and more specifically, ROGs 4 and 5.

Dated: December 1, 2023

Respectfully submitted,

/David M. Magee/

David M. Magee (Reg. No. 51,982)

CERTIFICATE OF SERVICE

Under 37 C.F.R. § 42.6(e), the undersigned certifies that on December 1, 2023, a copy of the foregoing PETITIONER'S OPPOSITION TO PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY, was served in its entirety on the following counsel of record for Patent Owner via email:

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