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Transcript of Hearing

Date: May 1, 2024
Case: Quasar Science, LLC -v- Colt International Clothing, Inc. (PTAB)

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QUASAR SCIENCE LLC EXHIBIT 1026
QUASAR SCIENCE LLC v. COLT INTERNATIONAL CLOTHING, INC.
IPR2023-00611

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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QUASAR SCIENCE LLC

Petitioner,

v.

COLT INTERNATIONAL CLOTHING, INC.,

d/b/a COLT LED,

Patent Owner.

_____

Case IPR 2023-00611

U.S. Patent No. 10,197, 224

Case IPR 2023-00613

U.S. Patent No. 10,411,582

Case IPR 2023-00614

U.S. Patent No. 10,566,895

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HEARING

May 1, 2024, 2:30 p.m. EST

BEFORE:

ROBERT J. WEINSCHENK, ESQ.
SUSAN G. BRADEN, ESQ.
ZHENYU YANG, ESQ.

REPORTED BY: Mary F. Bowman

Job No.: 536392

APPEARANCES (via teleconference:)

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MR. WARD: Good afternoon, Judges Weinschenk, Braden and Yang. This is Trenton Ward on behalf of Petitioner and I'm joined by my colleague Heath Briggs and I'll note we have a court reporter on the call today. Her name is Mary Bowman.

JUDGE WEINSCHENK: Thank you.

Mr. Ward, you will file a transcript of this conference call when it is available?

MR. WARD: Yes, we will.

JUDGE WEINSCHENK: Who do we have on the line for patent holder?

MR. HOFFMAN: David Hoffman for patent owner.

JUDGE WEINSCHENK: Thank you.

Mr. Hoffman, based on the email, it sounds like Patent Owner is seeking to withdraw the declarations from this case and the parties are looking for some guidance on how to accomplish that and whether there may be some disagreement on that as well.

Patent Owner, since you are seeking to withdraw the declarations, why don't we

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start with you Mr. Hoffman and tell me what's going on here.

MR. HOFFMAN: Sure. Patent Owner had agreed -- at the time this issue arose, Patent Owner had three potential deponents who were declarants who for various reasons did not or weren't going to sit for deposition. And the one of those, Mr. Macias, the inventor has been resolved. He is going to sit for deposition.

The other two are Messrs. Zhang, whom we had a discussion about I believe it was a week or ten days ago, and Mr. Finn.

So Patent Owner proposed to deal with this by just trying to achieve the same thing that would happen if the petitioner were to move to strike or a similar motion to get rid of the Zhang or Finn declarations because they had not sat for deposition.

And so Patent Owner proposed to try to achieve that situation as if they were never -- Zhang or Finn had never been

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filed.

The agreement or the potential agreement, the attempt to get that agreement broke down in some of the details -- because Patent Owner has some dual citations with the court for some issues, and with regard to Mr. Zhang, Patent Owner also submitted a deposition transcript of a 2018 deposition for him.

So there is some overlap in evidence, in evidentiary base and so what Patent Owner would propose now is that the Zhang and Finn declarations be either stricken and the citations to those in Patent Owner's response and/or in other declaration just be ignored by the Board, which from what I had seen was a typical remedy that the board applies when a declarant does not sit for a deposition. And the board will, say, give it little or no weight. Fine if it's given no weight and the board does not get into having the Patent Owner revise their responses or other declarations or deletions of stuff and basically says the board is a good at

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ignoring bad evidence. So -- or unsupported assertions.

So that's Patent Owner's position and we were hoping to just make life easier for all concerned, the Board, Petitioner and Patent Owner by resolving this at this point rather than by later motions.

JUDGE WEINSCHENK: Okay. Mr. Hoffman what is the dispute here? Is there an issue? Is there not an agreement on how to accomplish this?

MR. HOFFMAN: Correct, the Petitioner has stated that they want Patent Owner to delete -- to file a redacted version of the Patent Owner response and potentially one of the declarations, and the problem there is we are in disagreement as to what would be redacted because, as I said, there are things that are -- have dual support or partial support, and so those, Patent Owners would not want to redact and we certainly don't want to and I don't think the Board wants and the Petitioner does

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not want us to try to rewrite our Patent Owner response at this stage.

JUDGE WEINSCHENK: Okay, I understand.

So there are some portions of your Patent Owner response that make an argument that cites to more than one piece of evidence, one piece of evidence being the declaration that you want given no weight and then it also cites to something else.

So you don't want to redact that whole section because it may have at least some support in the evidence that is still in the record, still being considered.

Is that a fair summation?

MR. HOFFMAN: Yes, correct, your Honor.

JUDGE WEINSCHENK: Okay, thank you Mr. Hoffman, Mr. Ward, anything you would like to add here or explain further?

MR. WARD: Yes, absolutely.

Your Honors -- and let me start by apologizing for the need to come before your Honors for yet a third time in these

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IPRs. Since you have had email on Monday morning, or I guess midday Monday, we requested to speak to you about the three declarants that Mr. Hoffman has identified, Mr. Finn, Mr. Zhang and Mr. Macias, and I just want to address those declarants individually.

As Mr. Hoffman relayed, our first call with your Honors was about Mr. Finn and we had started a deposition of Mr. Finn in which Mr. Hoffman ended the deposition and refused to allow the witness to continue answering my questions, and in our first conference call with your Honors on April 9, Mr. Hoffman raised the possibility of withdrawing the Finn declaration in lieu of continuing the deposition and later proposed that after the call to Petitioner and Petitioner accepted that proposal.

So it sounds as if we have an agreement at least with respect to the Finn declaration.

The second individual, Mr. Zhang, that was the subject of our second call

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with your Honors on April 24 in which we identified that we proceed to depose Mr. Zhang, but according to Mr. Hoffman, he was unable to provide him for deposition. So a similar proposal was made with respect to striking the Zhang declaration from the record.

The third individual, Mr. Macias is the sole inventor for the three patents challenged in these IPRs, your Honors, and we had originally scheduled a deposition for Mr. Macias in his town of residence, as a matter of convenience to him. We arranged to depose Mr. Macias at a hotel near his home, Hyatt Valencia in Valencia, California on Tuesday April 23.

My colleagues, Mr. Briggs and Mr. Magee traveled to Los Angeles on Sunday, April 21, in preparation for that deposition, and we learned from Mr. Hoffman on Sunday evening that Mr. Macias had an eye issue and they wished to postpone the deposition.

So my colleagues had to return home and we had some significant travel

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expenses associated with traveling out to LA, but we agreed to pushing back the deposition and Mr. Hoffman agreed to reschedule the deposition for tomorrow, Thursday, May 2.

Then Mr. Hoffman came back to the proposal which is one we sent you on Monday, the proposal for Mr. Hoffman was that we simply add Mr. Macias to the list of individuals that would not appear for deposition; therefore, he would agree to strike the declaration of Mr. Macias. That was essentially the time period in which he emailed your Honors on Monday.

After we emailed your Honors, Mr. Hoffman came back and to say Mr. Macias had decided to appear for deposition, so we are now scrambling in an attempt to make that deposition happen and we're working with Mr. Hoffman.

Hopefully that deposition will go forward and get some value out of that conference room the Hyatt Valencia this Friday, May 3.

So with the issues we have on the

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table we can remove Mr. Macias because, as I understand it, hopefully, he will appear for a deposition this Friday.

So that leaves the issues with respect to Mr. Finn, and Mr. Zhang. So Mr. Hoffman identifies that he was willing to have the Finn and Zhang declarations stricken and simply leaving all of the discussions and citations to those declarations and briefs.

Petitioner's position on that, your Honors, is that it is not appropriate for those stricken declarations to continue to be referred in the record. As your Honors are aware, what is created here becomes the intrinsic record for these patents. It also would be part of the record for the case on appeal to the Federal Circuit.

So Petitioner's proposal to Mr. Hoffman was that in addition to striking the declarations, that redactions be provided to the Patent Owner responses for the citations and discussions of these declarations.

So what we are asking for today,

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your Honors, is authorization to file a motion to strike the Finn and Zhang declarations. It sounds like we have an agreement at least with respect to the declarations, and perhaps the only issue that then requires briefing by motion is to what extent the citations and discussion of those materials should be stricken from the record as well.

JUDGE WEINSCHENK: Mr. Ward, I have a few questions for you.

When you say stricken from the record, are you asking that we expunge them from the record so they are not in the record at all? Or just asking that we strike them and don't consider them or give them any weight?

MR. WARD: Well, that was actually my original proposal, Judge Weinschenk. Knowing the Board's Rule 42.7 for management of the record is expungement, I had originally suggested that that's what we should do, we should expunge the declarations, expunge the original Patent Owner responses and file redacted Patent

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Owner responses.

But as I understand it from Mr. Hoffman, he would prefer that the documents be stricken.

If we have agreement with respect to striking the Finn and Zhang declarations, then I think that's something that the parties sound like they are both willing to agree to.

It sounds like the only disagreement left on the table here is what to do with the citations and discussion of those materials in the briefs.

JUDGE WEINSCHENK: Let's start with the exhibits. Is there an agreement -- I think we are mixing terms here a little bit.

With respect to the two declarations, is a there an agreement that you want them stricken and what do you mean by that? Does that mean expunged? What practically would you like us to do with those declarations? Or do you just mean we are not going to consider them?

MR. HOFFMAN: Are you asking me,

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Mr. Hoffman, your Honor?

JUDGE WEINSCHENK: I'm asking both of you if there is an agreement or not. I'm not sure I understand exactly what the parties' proposals are.

Mr. Ward is talking -- why don't we start with Mr. Ward and then Mr. Hoffman you can tell me.

MR. WARD: Yes, Judge, thank you for the question.

Petitioner consents to and agrees with a consented to request to strike the Finn declaration and the Zhang declaration and for those declarations to be removed from the record.

JUDGE WEINSCHENK: So you want them expunged?

MR. WARD: Yes.

JUDGE WEINSCHENK: Mr. Hoffman, what would you like?

MR. HOFFMAN: That is fine for me. Strike or expunge. I'm in agreement either way.

JUDGE WEINSCHENK: Okay. So now I think the issue remains with respect to

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what to do with the response, the Patent Owner response.

Mr. Ward, how do you respond to Mr. Hoffman's concern that it may be difficult practically to do this where, for example, maybe there is an argument that has citations or something that is not being stricken, that would require, you know, not simply redacting, but even rewriting because there is still evidence to support maybe part or all of the statement even if the declaration is struck?

MR. WARD: Frankly, your Honor, it is a messy situation. It's not a mess that Petitioner has created here. But we simply can't have statements remaining in the record that are -- relate to and cite to materials that are no longer in the record.

We can't have that for the purposes of the intrinsic evidence. We can't have that for the purposes of the record that will be appearing in the joint appendix in front of the Federal Circuit on appeal.

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It sounds like we have a disagreement there and my suggestion would be, your Honors, that that is the proper basis for a motion briefing, that we should move as to the appropriateness of those particular citations and discussions that should be stricken from the record.

JUDGE WEINSCHENK: What are you proposing Mr. Ward, do you want him to rewrite those portions of the brief? Do you want a new brief? It seems like that wouldn't be particularly advantageous at this stage of the proceeding to have him rewrite things.

MR. WARD: Absolutely not, your Honor. I would not wish to have Patent Owner rewrite things. But I would wish to have is to have a redacted version of these materials that are not now properly in the record, shouldn't be cited to or discussed in the record. So we would suggest that black box redactions be made to the Patent Owner responses.

For instance, your Honor, as I mentioned on our last conference call, the

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Zhang declaration is almost entirely reproduced in each one of the Patent Owner responses.

MR. WEINSCHENK: So what happens if there is a sentence that cites the two pieces of evidence; one is stricken and one is not? What would you propose we do there? Just redact citation to the stricken declaration and leave everything else in there?

MR. WARD: I think that would be the subject, your Honor -- it would have to be a sentence-by-sentence analysis there. That's why I suggested it is a proper subject of briefing.

MR. WEINSCHENK: All right.

Mr. Hoffman, anything you would like to add on this?

MR. HOFFMAN: Yes, I could certainly redact, you know, direct quotes to -- on -- to expunge the declarations, but the problem is I really don't want to get into a redaction line by line.

And so if I have to do that, I would much rather agree to just give these no

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weight and have the Board treat it as it normally does, then I would. But I don't really want to go backwards. I want to try to move forward to agreement.

So I think it is -- I think it is very messy to try to figure out anything beyond redacting exact quotes and redacting the citation to the expunged exhibit.

And if there is a sentence that the Board doesn't -- that in reviewing this, looking at the merits, doesn't think is supported by the existing evidence, that's the Board's realm.

But we are asking the Board, Petitioner is asking the Board to try to make a decision based on whether or not there is support on things prior to deciding the merits and I think that's a very difficult area to get into.

MR. WARD: Your Honor, if I could make one additional thing, sorry, Judge Weinschenk.

JUDGE WEINSCHENK: Go ahead, Mr. Ward.

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MR. WARD: One additional point and Mr. Hoffman mentioned it earlier, but Petitioner also would seek to strike the deposition transcript that Mr. Hoffman mentioned, Exhibit 2079. It's a transcript of a deposition of Mr. Zhang that Patent Owner previously took and we would also seek to strike that deposition transcript and my understanding is we don't have an agreement with Patent Owner on that.

All of that to say, your Honor, it seems to me -- and that's just to go back to my original request, we would request for authorization for a motion to strike these materials so that we can have the opportunity to fully brief this to your Honors.

JUDGE WEINSCHENK: Mr. Ward, I think you just injected an entirely new issue about the deposition transcript which I have not previously heard. Why are we trying to strike that?

MR. WARD: Just like we haven't had an opportunity to cross-examine Mr. Zhang

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with respect to his declaration testimony, we don't have an opportunity to cross-examine Mr. Zhang with respect to this deposition transcript.

JUDGE WEINSCHENK: I'm going to place everyone on a brief hold here and confer with the panel we will be back in a moment.

MR. HOFFMAN: Your Honor?

(Recess)

MR. WEINSCHENK: This is Judge Weinschenk again.

Mr. Ward, are you still on the line?

MR. WARD: Yes, I am. Thank you your Honor.

JUDGE WEINSCHENK: Mr. Hoffman, are you still there?

MR. HOFFMAN: Yes, your Honor.

JUDGE WEINSCHENK: Here is what we are going to do.

We would like you guys to get together after the call and, first off, work on putting together, whether you call it a joint stipulation or joint paper and what this is going to indicate is what

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specific exhibits you have agreed are being withdrawn. And also identify by page and line number everywhere in the Patent Owner response where those exhibits have been cited or quoted or otherwise referenced.

I'll stop there with that part. Any questions on that, Mr. Ward?

MR. WARD: Just a question. It says, your Honor, exhibits that are to be withdrawn. So what do you specifically mean by "withdraw," your Honor?

MR. WEINSCHENK: Well, I mean whatever you guys -- the exhibits that you have agreed to have stricken, identify those exhibits.

I think as a practical matter, whether we expunge them or keep them in the record for some period of time here until we have a hearing, I'm not sure we have decided that yet, but let's at least identify what you have agreed to have stricken and then how we practically accomplish that, the panel will decide. We understand the parties' positions on

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that.

And secondly, identify where it is referenced in the Patent Owner response.

Any questions from you, Mr. Hoffman?

MR. HOFFMAN: None, your Honor.

JUDGE WEINSCHENK: The second thing we would like to you do is to work together on preparing a redacted version of the Patent Owner response and I think you should be able to reach agreement on some portions of it.

If there are portions that you cannot reach agreement on that one party can't agree to redact, then in that same joint paper you can also indicate your disagreement about redacting the Patent Owner response and specifically put in there which portions are disputed and what the parties' positions are on it, very briefly.

Any questions about that, Mr. Ward?

MR. WARD: No questions from petitioner. Thank you, your Honors.

JUDGE WEINSCHENK: Any questions from you, Mr. Hoffman?

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MR. HOFFMAN: Just want to make sure I fully understand.

So the joint Patent Owner response, joint paper is going to have a copy of the Patent Owner response with the agreed upon redactions and the disputed redactions and have comments regarding this with respect to the disputed redactions in that same document.

JUDGE WEINSCHENK: Yeah, I mean maybe -- I haven't thought about this practically, but maybe at the first stage here, you can attach the -- what your proposed redactions are as an appendix to the joint paper so that we can see and see what's disputed and within that joint paper, put some -- your positions on what is disputed.

MR. HOFFMAN: Okay. Okay.

JUDGE WEINSCHENK: All right.

Mr. Hoffman, have you met and conferred with Petitioner yet on this issue about the Zhang deposition transcript?

MR. HOFFMAN: I think -- I would say

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no. It did come up, it was mentioned, but we really -- I don't think we met and conferred on that particular issue.

And I would point out there was no objection filed to that exhibit.

JUDGE WEINSCHENK: Okay, all right, well, why don't you tack that on to your discussions here about this joint paper and the redacted Patent Owner response, discuss what to do with this deposition transcript. And if there is still a dispute about that as well, you can let us know in an email if there is a dispute about the deposition transcript and we will take that issue up later.

MR. HOFFMAN: Okay, understood, your Honor.

JUDGE WEINSCHENK: Mr. Ward, are there any questions or any issues we haven't sufficiently addressed here?

MR. WARD: No, your Honor, thank you for your attention to these matters and thank you for your guidance.

JUDGE WEINSCHENK: Mr. Hoffman, from you, any other questions or issues that we

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have not addressed?

MR. HOFFMAN: No, your Honor.

JUDGE WEINSCHENK: I understand there is a mixed scenario here, so if in preparing this joint paper that we have requested, if there is any practical issues about how to do it, I know this isn't a standard paper, you can reach out to us by email and we will try to resolve it, call, maybe by email.

I also just suggest you guys really work together on this one. You know, we have had quite a few calls on these cases and I think you all can work out practically how to get this done.

The idea being the panel has an information to know what the agreements are, what the disputes are and we can take it from there.

And again, I will emphasize you all are pretty experienced counsel here. I expect you all to the best of your ability to work together. I understand this is a bit contentious here. But to avoid having future calls, do your best to work out as

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much as you can in this case.

I'm going to pause for a brief second and see if there is anything else from my panel here before we adjourn.

(Pause).

JUDGE WEINSCHENK: All right, nothing else from the panel.

I'll check one more time. Mr. Ward, everything good on your end?

MR. WARD: Thank you.

JUDGE WEINSCHENK: Mr. Hoffman, everything good on your end?

MR. HOFFMAN: Yes, your Honor.

JUDGE WEINSCHENK: All right. We will look forward to seeing those papers filed from you and if there is any questions, you can reach out to us.

With that, the call is adjourned.

* * * *

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CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC

I, MARY F. BOWMAN, Certified Reporter and Notary Public within and for the State of New Jersey do hereby certify:

That this Hearing, the deposition was taken before me and is a true record of the testimony given by such witness.

I further certify that the adverse party, COLT INTERNATIONAL CLOTHING, INC., was represented by counsel at the deposition.

I further certify that the deposition of this Hearing, occurred virtually on Wednesday, May 1, 2024, commencing at 2:30 p.m. to 3:14 p.m.

I further certify that I am not related to any of the parties to this action by blood or marriage, I am not employed by or an attorney to any of the parties to this action, and that I am in no way interested, financially or otherwise, in the outcome of this matter.

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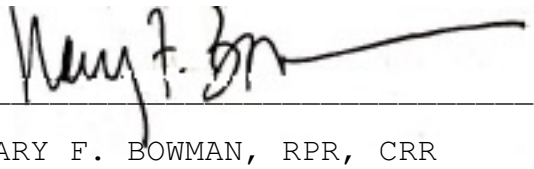
IN WITNESS WHEREOF, I have hereunto set my hand this 13th day of May, 2024.



MARY F. BOWMAN, RPR, CRR
NOTARY PUBLIC IN AND FOR THE
STATE OF NEW JERSEY

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