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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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WORLDWIDE COURT REPORTING & LITIGATION TECHNOLOGY

1 UNITED STATES PATENT AND TRADEMARK OFFICE

2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3 _____

4 QUASAR SCIENCE LLC

5 Petitioner,

6 v.

7 COLT INTERNATIONAL CLOTHING, INC.,

8 d/b/a COLT LED,

9 Patent Owner.

10 _____

11 Case IPR 2023-00611

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

13 Case IPR 2023-00613

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

15 Case IPR 2023-00614

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

17 _____

18 HEARING

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

20 BEFORE:

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

23

24 REPORTED BY: Mary F. Bowman

25 Job No.: 536392

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1 MR. WARD: Good afternoon, Judges
2 Weinschenk, Braden and Yang. This is
3 Trenton Ward on behalf of Petitioner and
4 I'm joined by my colleague Heath Briggs
5 and I'll note we have a court reporter on
6 the call today. Her name is Mary Bowman.
7 JUDGE WEINSCHENK: Thank you.
8 Mr. Ward, you will file a transcript
9 of this conference call when it is
10 available?
11 MR. WARD: Yes, we will.
12 JUDGE WEINSCHENK: Who do we have on
13 the line for patent holder?
14 MR. HOFFMAN: David Hoffman for
15 patent owner.
16 JUDGE WEINSCHENK: Thank you.
17 Mr. Hoffman, based on the email, it
18 sounds like Patent Owner is seeking to
19 withdraw the declarations from this case
20 and the parties are looking for some
21 guidance on how to accomplish that and
22 whether there may be some disagreement on
23 that as well.
24 Patent Owner, since you are seeking
25 to withdraw the declarations, why don't we

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1 start with you Mr. Hoffman and tell me
2 what's going on here.
3 MR. HOFFMAN: Sure. Patent Owner
4 had agreed -- at the time this issue
5 arose, Patent Owner had three potential
6 deponents who were declarants who for
7 various reasons did not or weren't going
8 to sit for deposition. And the one of
9 those, Mr. Macias, the inventor has been
10 resolved. He is going to sit for
11 deposition.
12 The other two are Messrs. Zhang,
13 whom we had a discussion about I believe
14 it was a week or ten days ago, and
15 Mr. Finn.
16 So Patent Owner proposed to deal
17 with this by just trying to achieve the
18 same thing that would happen if the
19 petitioner were to move to strike or a
20 similar motion to get rid of the Zhang or
21 Finn declarations because they had not sat
22 for deposition.
23 And so Patent Owner proposed to try
24 to achieve that situation as if they were
25 never -- Zhang or Finn had never been

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1 filed.
2 The agreement or the potential
3 agreement, the attempt to get that
4 agreement broke down in some of the
5 details -- because Patent Owner has some
6 dual citations with the court for some
7 issues, and with regard to Mr. Zhang,
8 Patent Owner also submitted a deposition
9 transcript of a 2018 deposition for him.
10 So there is some overlap in
11 evidence, in evidentiary base and so what
12 Patent Owner would propose now is that the
13 Zhang and Finn declarations be either
14 stricken and the citations to those in
15 Patent Owner's response and/or in other
16 declaration just be ignored by the Board,
17 which from what I had seen was a typical
18 remedy that the board applies when a
19 declarant does not sit for a deposition.
20 And the board will, say, give it little or
21 no weight. Fine if it's given no weight
22 and the board does not get into having the
23 Patent Owner revise their responses or
24 other declarations or deletions of stuff
25 and basically says the board is a good at

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1 ignoring bad evidence. So -- or
2 unsupported assertions.
3 So that's Patent Owner's position
4 and we were hoping to just make life
5 easier for all concerned, the Board,
6 Petitioner and Patent Owner by resolving
7 this at this point rather than by later
8 motions.
9 JUDGE WEINSCHENK: Okay.
10 Mr. Hoffman what is the dispute here? Is
11 there an issue? Is there not an agreement
12 on how to accomplish this?
13 MR. HOFFMAN: Correct, the
14 Petitioner has stated that they want
15 Patent Owner to delete -- to file a
16 redacted version of the Patent Owner
17 response and potentially one of the
18 declarations, and the problem there is we
19 are in disagreement as to what would be
20 redacted because, as I said, there are
21 things that are -- have dual support or
22 partial support, and so those, Patent
23 Owners would not want to redact and we
24 certainly don't want to and I don't think
25 the Board wants and the Petitioner does

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1 not want us to try to rewrite our Patent
2 Owner response at this stage.
3 JUDGE WEINSCHENK: Okay, I
4 understand.
5 So there are some portions of your
6 Patent Owner response that make an
7 argument that cites to more than one piece
8 of evidence, one piece of evidence being
9 the declaration that you want given no
10 weight and then it also cites to something
11 else.
12 So you don't want to redact that
13 whole section because it may have at least
14 some support in the evidence that is still
15 in the record, still being considered.
16 Is that a fair summation?
17 MR. HOFFMAN: Yes, correct, your
18 Honor.
19 JUDGE WEINSCHENK: Okay, thank you
20 Mr. Hoffman, Mr. Ward, anything you would
21 like to add here or explain further?
22 MR. WARD: Yes, absolutely.
23 Your Honors -- and let me start by
24 apologizing for the need to come before
25 your Honors for yet a third time in these

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1 IPRs. Since you have had email on Monday
2 morning, or I guess midday Monday, we
3 requested to speak to you about the three
4 declarants that Mr. Hoffman has
5 identified, Mr. Finn, Mr. Zhang and
6 Mr. Macias, and I just want to address
7 those declarants individually.
8 As Mr. Hoffman relayed, our first
9 call with your Honors was about Mr. Finn
10 and we had started a deposition of
11 Mr. Finn in which Mr. Hoffman ended the
12 deposition and refused to allow the
13 witness to continue answering my
14 questions, and in our first conference
15 call with your Honors on April 9,
16 Mr. Hoffman raised the possibility of
17 withdrawing the Finn declaration in lieu
18 of continuing the deposition and later
19 proposed that after the call to Petitioner
20 and Petitioner accepted that proposal.
21 So it sounds as if we have an
22 agreement at least with respect to the
23 Finn declaration.
24 The second individual, Mr. Zhang,
25 that was the subject of our second call

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1 with your Honors on April 24 in which we
2 identified that we proceed to depose
3 Mr. Zhang, but according to Mr. Hoffman,
4 he was unable to provide him for
5 deposition. So a similar proposal was
6 made with respect to striking the Zhang
7 declaration from the record.
8 The third individual, Mr. Macias is
9 the sole inventor for the three patents
10 challenged in these IPRs, your Honors, and
11 we had originally scheduled a deposition
12 for Mr. Macias in his town of residence,
13 as a matter of convenience to him. We
14 arranged to depose Mr. Macias at a hotel
15 near his home, Hyatt Valencia in Valencia,
16 California on Tuesday April 23.
17 My colleagues, Mr. Briggs and
18 Mr. Magee traveled to Los Angeles on
19 Sunday, April 21, in preparation for that
20 deposition, and we learned from
21 Mr. Hoffman on Sunday evening that
22 Mr. Macias had an eye issue and they
23 wished to postpone the deposition.
24 So my colleagues had to return home
25 and we had some significant travel

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1 expenses associated with traveling out to
2 LA, but we agreed to pushing back the
3 deposition and Mr. Hoffman agreed to
4 reschedule the deposition for tomorrow,
5 Thursday, May 2.
6 Then Mr. Hoffman came back to the
7 proposal which is one we sent you on
8 Monday, the proposal for Mr. Hoffman was
9 that we simply add Mr. Macias to the list
10 of individuals that would not appear for
11 deposition; therefore, he would agree to
12 strike the declaration of Mr. Macias.
13 That was essentially the time period in
14 which he emailed your Honors on Monday.
15 After we emailed your Honors,
16 Mr. Hoffman came back and to say
17 Mr. Macias had decided to appear for
18 deposition, so we are now scrambling in an
19 attempt to make that deposition happen and
20 we're working with Mr. Hoffman.
21 Hopefully that deposition will go
22 forward and get some value out of that
23 conference room the Hyatt Valencia this
24 Friday, May 3.
25 So with the issues we have on the

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1 table we can remove Mr. Macias because, as
2 I understand it, hopefully, he will appear
3 for a deposition this Friday.
4 So that leaves the issues with
5 respect to Mr. Finn, and Mr. Zhang. So
6 Mr. Hoffman identifies that he was willing
7 to have the Finn and Zhang declarations
8 stricken and simply leaving all of the
9 discussions and citations to those
10 declarations and briefs.
11 Petitioner's position on that, your
12 Honors, is that it is not appropriate for
13 those stricken declarations to continue to
14 be referred in the record. As your Honors
15 are aware, what is created here becomes
16 the intrinsic record for these patents.
17 It also would be part of the record for
18 the case on appeal to the Federal Circuit.
19 So Petitioner's proposal to
20 Mr. Hoffman was that in addition to
21 striking the declarations, that redactions
22 be provided to the Patent Owner responses
23 for the citations and discussions of these
24 declarations.
25 So what we are asking for today,

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1 your Honors, is authorization to file a
2 motion to strike the Finn and Zhang
3 declarations. It sounds like we have an
4 agreement at least with respect to the
5 declarations, and perhaps the only issue
6 that then requires briefing by motion is
7 to what extent the citations and
8 discussion of those materials should be
9 stricken from the record as well.
10 JUDGE WEINSCHENK: Mr. Ward, I have
11 a few questions for you.
12 When you say stricken from the
13 record, are you asking that we expunge
14 them from the record so they are not in
15 the record at all? Or just asking that we
16 strike them and don't consider them or
17 give them any weight?
18 MR. WARD: Well, that was actually
19 my original proposal, Judge Weinschenk.
20 Knowing the Board's Rule 42.7 for
21 management of the record is expungement, I
22 had originally suggested that that's what
23 we should do, we should expunge the
24 declarations, expunge the original Patent
25 Owner responses and file redacted Patent

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1 Owner responses.
2 But as I understand it from
3 Mr. Hoffman, he would prefer that the
4 documents be stricken.
5 If we have agreement with respect to
6 striking the Finn and Zhang declarations,
7 then I think that's something that the
8 parties sound like they are both willing
9 to agree to.
10 It sounds like the only disagreement
11 left on the table here is what to do with
12 the citations and discussion of those
13 materials in the briefs.
14 JUDGE WEINSCHENK: Let's start with
15 the exhibits. Is there an agreement -- I
16 think we are mixing terms here a little
17 bit.
18 With respect to the two
19 declarations, is a there an agreement that
20 you want them stricken and what do you
21 mean by that? Does that mean expunged?
22 What practically would you like us to do
23 with those declarations? Or do you just
24 mean we are not going to consider them?
25 MR. HOFFMAN: Are you asking me,

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1 Mr. Hoffman, your Honor?
2 JUDGE WEINSCHENK: I'm asking both
3 of you if there is an agreement or not.
4 I'm not sure I understand exactly what the
5 parties' proposals are.
6 Mr. Ward is talking -- why don't we
7 start with Mr. Ward and then Mr. Hoffman
8 you can tell me.
9 MR. WARD: Yes, Judge, thank you for
10 the question.
11 Petitioner consents to and agrees
12 with a consented to request to strike the
13 Finn declaration and the Zhang declaration
14 and for those declarations to be removed
15 from the record.
16 JUDGE WEINSCHENK: So you want them
17 expunged?
18 MR. WARD: Yes.
19 JUDGE WEINSCHENK: Mr. Hoffman, what
20 would you like?
21 MR. HOFFMAN: That is fine for me.
22 Strike or expunge. I'm in agreement
23 either way.
24 JUDGE WEINSCHENK: Okay. So now I
25 think the issue remains with respect to

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1 what to do with the response, the Patent
2 Owner response.
3 Mr. Ward, how do you respond to
4 Mr. Hoffman's concern that it may be
5 difficult practically to do this where,
6 for example, maybe there is an argument
7 that has citations or something that is
8 not being stricken, that would require,
9 you know, not simply redacting, but even
10 rewriting because there is still evidence
11 to support maybe part or all of the
12 statement even if the declaration is
13 struck?
14 MR. WARD: Frankly, your Honor, it
15 is a messy situation. It's not a mess
16 that Petitioner has created here. But we
17 simply can't have statements remaining in
18 the record that are -- relate to and cite
19 to materials that are no longer in the
20 record.
21 We can't have that for the purposes
22 of the intrinsic evidence. We can't have
23 that for the purposes of the record that
24 will be appearing in the joint appendix in
25 front of the Federal Circuit on appeal.

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1 It sounds like we have a
2 disagreement there and my suggestion would
3 be, your Honors, that that is the proper
4 basis for a motion briefing, that we
5 should move as to the appropriateness of
6 those particular citations and discussions
7 that should be stricken from the record.
8 JUDGE WEINSCHENK: What are you
9 proposing Mr. Ward, do you want him to
10 rewrite those portions of the brief? Do
11 you want a new brief? It seems like that
12 wouldn't be particularly advantageous at
13 this stage of the proceeding to have him
14 rewrite things.
15 MR. WARD: Absolutely not, your
16 Honor. I would not wish to have Patent
17 Owner rewrite things. But I would wish to
18 have is to have a redacted version of
19 these materials that are not now properly
20 in the record, shouldn't be cited to or
21 discussed in the record. So we would
22 suggest that black box redactions be made
23 to the Patent Owner responses.
24 For instance, your Honor, as I
25 mentioned on our last conference call, the

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1 Zhang declaration is almost entirely
2 reproduced in each one of the Patent Owner
3 responses.
4 MR. WEINSCHENK: So what happens if
5 there is a sentence that cites the two
6 pieces of evidence; one is stricken and
7 one is not? What would you propose we do
8 there? Just redact citation to the
9 stricken declaration and leave everything
10 else in there?
11 MR. WARD: I think that would be the
12 subject, your Honor -- it would have to be
13 a sentence-by-sentence analysis there.
14 That's why I suggested it is a proper
15 subject of briefing.
16 MR. WEINSCHENK: All right.
17 Mr. Hoffman, anything you would like
18 to add on this?
19 MR. HOFFMAN: Yes, I could certainly
20 redact, you know, direct quotes to --
21 on -- to expunge the declarations, but the
22 problem is I really don't want to get into
23 a redaction line by line.
24 And so if I have to do that, I would
25 much rather agree to just give these no

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1 weight and have the Board treat it as it
2 normally does, then I would. But I don't
3 really want to go backwards. I want to
4 try to move forward to agreement.
5 So I think it is -- I think it is
6 very messy to try to figure out anything
7 beyond redacting exact quotes and
8 redacting the citation to the expunged
9 exhibit.
10 And if there is a sentence that the
11 Board doesn't -- that in reviewing this,
12 looking at the merits, doesn't think is
13 supported by the existing evidence, that's
14 the Board's realm.
15 But we are asking the Board,
16 Petitioner is asking the Board to try to
17 make a decision based on whether or not
18 there is support on things prior to
19 deciding the merits and I think that's a
20 very difficult area to get into.
21 MR. WARD: Your Honor, if I could
22 make one additional thing, sorry, Judge
23 Weinschenk.
24 JUDGE WEINSCHENK: Go ahead,
25 Mr. Ward.

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1 MR. WARD: One additional point and
2 Mr. Hoffman mentioned it earlier, but
3 Petitioner also would seek to strike the
4 deposition transcript that Mr. Hoffman
5 mentioned, Exhibit 2079. It's a
6 transcript of a deposition of Mr. Zhang
7 that Patent Owner previously took and we
8 would also seek to strike that deposition
9 transcript and my understanding is we
10 don't have an agreement with Patent Owner
11 on that.
12 All of that to say, your Honor, it
13 seems to me -- and that's just to go back
14 to my original request, we would request
15 for authorization for a motion to strike
16 these materials so that we can have the
17 opportunity to fully brief this to your
18 Honors.
19 JUDGE WEINSCHENK: Mr. Ward, I think
20 you just injected an entirely new issue
21 about the deposition transcript which I
22 have not previously heard. Why are we
23 trying to strike that?
24 MR. WARD: Just like we haven't had
25 an opportunity to cross-examine Mr. Zhang

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1 with respect to his declaration testimony,
2 we don't have an opportunity to
3 cross-examine Mr. Zhang with respect to
4 this deposition transcript.
5 JUDGE WEINSCHENK: I'm going to
6 place everyone on a brief hold here and
7 confer with the panel we will be back in a
8 moment.
9 MR. HOFFMAN: Your Honor?
10 (Recess)
11 MR. WEINSCHENK: This is Judge
12 Weinschenk again.
13 Mr. Ward, are you still on the line?
14 MR. WARD: Yes, I am. Thank you
15 your Honor.
16 JUDGE WEINSCHENK: Mr. Hoffman, are
17 you still there?
18 MR. HOFFMAN: Yes, your Honor.
19 JUDGE WEINSCHENK: Here is what we
20 are going to do.
21 We would like you guys to get
22 together after the call and, first off,
23 work on putting together, whether you call
24 it a joint stipulation or joint paper and
25 what this is going to indicate is what

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1 specific exhibits you have agreed are
2 being withdrawn. And also identify by
3 page and line number everywhere in the
4 Patent Owner response where those exhibits
5 have been cited or quoted or otherwise
6 referenced.
7 I'll stop there with that part. Any
8 questions on that, Mr. Ward?
9 MR. WARD: Just a question. It
10 says, your Honor, exhibits that are to be
11 withdrawn. So what do you specifically
12 mean by "withdraw," your Honor?
13 MR. WEINSCHENK: Well, I mean
14 whatever you guys -- the exhibits that you
15 have agreed to have stricken, identify
16 those exhibits.
17 I think as a practical matter,
18 whether we expunge them or keep them in
19 the record for some period of time here
20 until we have a hearing, I'm not sure we
21 have decided that yet, but let's at least
22 identify what you have agreed to have
23 stricken and then how we practically
24 accomplish that, the panel will decide.
25 We understand the parties' positions on

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1 that.
2 And secondly, identify where it is
3 referenced in the Patent Owner response.
4 Any questions from you, Mr. Hoffman?
5 MR. HOFFMAN: None, your Honor.
6 JUDGE WEINSCHENK: The second thing
7 we would like to you do is to work
8 together on preparing a redacted version
9 of the Patent Owner response and I think
10 you should be able to reach agreement on
11 some portions of it.
12 If there are portions that you
13 cannot reach agreement on that one party
14 can't agree to redact, then in that same
15 joint paper you can also indicate your
16 disagreement about redacting the Patent
17 Owner response and specifically put in
18 there which portions are disputed and what
19 the parties' positions are on it, very
20 briefly.
21 Any questions about that, Mr. Ward?
22 MR. WARD: No questions from
23 petitioner. Thank you, your Honors.
24 JUDGE WEINSCHENK: Any questions
25 from you, Mr. Hoffman?

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1 MR. HOFFMAN: Just want to make sure
2 I fully understand.
3 So the joint Patent Owner response,
4 joint paper is going to have a copy of the
5 Patent Owner response with the agreed upon
6 redactions and the disputed redactions and
7 have comments regarding this with respect
8 to the disputed redactions in that same
9 document.
10 JUDGE WEINSCHENK: Yeah, I mean
11 maybe -- I haven't thought about this
12 practically, but maybe at the first stage
13 here, you can attach the -- what your
14 proposed redactions are as an appendix to
15 the joint paper so that we can see and see
16 what's disputed and within that joint
17 paper, put some -- your positions on what
18 is disputed.
19 MR. HOFFMAN: Okay. Okay.
20 JUDGE WEINSCHENK: All right.
21 Mr. Hoffman, have you met and
22 conferred with Petitioner yet on this
23 issue about the Zhang deposition
24 transcript?
25 MR. HOFFMAN: I think -- I would say

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1 no. It did come up, it was mentioned, but
2 we really -- I don't think we met and
3 conferred on that particular issue.
4 And I would point out there was no
5 objection filed to that exhibit.
6 JUDGE WEINSCHENK: Okay, all right,
7 well, why don't you tack that on to your
8 discussions here about this joint paper
9 and the redacted Patent Owner response,
10 discuss what to do with this deposition
11 transcript. And if there is still a
12 dispute about that as well, you can let us
13 know in an email if there is a dispute
14 about the deposition transcript and we
15 will take that issue up later.
16 MR. HOFFMAN: Okay, understood, your
17 Honor.
18 JUDGE WEINSCHENK: Mr. Ward, are
19 there any questions or any issues we
20 haven't sufficiently addressed here?
21 MR. WARD: No, your Honor, thank you
22 for your attention to these matters and
23 thank you for your guidance.
24 JUDGE WEINSCHENK: Mr. Hoffman, from
25 you, any other questions or issues that we

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1 have not addressed?
2 MR. HOFFMAN: No, your Honor.
3 JUDGE WEINSCHENK: I understand
4 there is a mixed scenario here, so if in
5 preparing this joint paper that we have
6 requested, if there is any practical
7 issues about how to do it, I know this
8 isn't a standard paper, you can reach out
9 to us by email and we will try to resolve
10 it, call, maybe by email.
11 I also just suggest you guys really
12 work together on this one. You know, we
13 have had quite a few calls on these cases
14 and I think you all can work out
15 practically how to get this done.
16 The idea being the panel has an
17 information to know what the agreements
18 are, what the disputes are and we can take
19 it from there.
20 And again, I will emphasize you all
21 are pretty experienced counsel here. I
22 expect you all to the best of your ability
23 to work together. I understand this is a
24 bit contentious here. But to avoid having
25 future calls, do your best to work out as

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1 much as you can in this case.
2 I'm going to pause for a brief
3 second and see if there is anything else
4 from my panel here before we adjourn.
5 (Pause).
6 JUDGE WEINSCHENK: All right,
7 nothing else from the panel.
8 I'll check one more time. Mr. Ward,
9 everything good on your end?
10 MR. WARD: Thank you.
11 JUDGE WEINSCHENK: Mr. Hoffman,
12 everything good on your end?
13 MR. HOFFMAN: Yes, your Honor.
14 JUDGE WEINSCHENK: All right. We
15 will look forward to seeing those papers
16 filed from you and if there is any
17 questions, you can reach out to us.
18 With that, the call is adjourned.
19 * * * *
20
21
22
23
24
25

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1 CERTIFICATE OF SHORTHAND REPORTER - NOTARY PUBLIC
2
3 I, MARY F. BOWMAN, Certified Reporter and Notary
4 Public within and for the State of New Jersey do
5 hereby certify:
6
7 That this Hearing, the deposition was taken before me
8 and is a true record of the testimony given by such
9 witness.
10
11 I further certify that the adverse party,
12 COLT INTERNATIONAL CLOTHING, INC., was represented
13 by counsel at the deposition.
14
15 I further certify that the deposition of this
16 Hearing, occurred virtually on Wednesday, May 1,
17 2024, commencing at 2:30 p.m. to 3:14 p.m.
18
19 I further certify that I am not related to
20 any of the parties to this action by blood or
21 marriage, I am not employed by or an attorney to any
22 of the parties to this action, and that I am in no way
23 interested, financially or otherwise, in the outcome
24 of this matter.
25

QUASAR SCIENCE LLC EXHIBIT 1063
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1 IN WITNESS WHEREOF, I have hereunto
2 set my hand this 13th day of May, 2024.
3
4
5 _____
6 MARY F. BOWMAN, RPR, CRR
7 NOTARY PUBLIC IN AND FOR THE
8 STATE OF NEW JERSEY
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