

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: IPR2023-00614
U.S. Patent No. 10,556,895

**JOINT MOTION TO SEAL EXHIBITS
2071 AND 2093**

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EXHIBIT LIST

Exhibit No.	Exhibit Description
1020	Protective Order (as Entered by the Board Per Paper No. 25)
2071	Patent Owner Colt's Actual Sales from 2017 and 2018 to Wamco ("Actual Sales List")(CONFIDENTIAL-PROTECTIVE ORDER MATERIAL)
2093	Petitioner's Objections and Answers to Patent Owner's Interrogatory Nos. 1 – 5, served January 12, 2024 ("Petitioner's Interrogatory Responses") (CONFIDENTIAL-PROTECTIVE ORDER MATERIAL)
2093	Petitioner's Objections and Answers to Patent Owner's Interrogatory Nos. 1 – 5, served January 12, 2024 ("Petitioner's Interrogatory Responses") (PUBLIC-REDACTED)

I. INTRODUCTION

Pursuant to 37 C.F.R. §§ 42.14 and 42.54, the parties, Patent Owner Colt International Clothing, Inc. (“COLT”) and Petitioner Quasar Science LLC (a Delaware LLC) (“Petitioner QUASAR”) jointly move to seal **Exhibits 2071 and 2093** and treat them as confidential pursuant to the already-entered Protective Order (**Exhibit 1020**) in this IPR Proceeding. The parties also seek to seal the Patent Owner Response which incorporates some of the confidential information. The parties met and conferred and will generate a redacted public version for the Patent Owner to submit to the Board.

Good cause to seal these documents exists because **Exhibit 2071** contains confidential and proprietary sales and revenue information of Patent Owner COLT and **Exhibit 2093** contains confidential and proprietary sales and revenue information of Petitioner QUASAR designated as “Protective Order Material” in discovery. As explained further below, and the parties maintain that their respective sales and revenue information is commercially sensitive, non-public information that only retains its value when treated in accordance with laws that protect such confidential information (*e.g.*, trade secret law). Both parties restrict the use of their respective confidential information to avoid public disclosure. Accordingly, the parties jointly file this motion to protect certain confidential information from public disclosure, while allowing the parties access to that

information in this proceeding.

II. STANDARD FOR GRANTING A MOTION TO SEAL

A motion to seal may be granted for good cause. 37 C.F.R. § 42.54. To determine whether good cause exists, the Board must “strike a balance between the public’s interest in maintaining a complete and understandable file history and the parties’ interest in protecting truly sensitive information.” *Garmin Int’l, Inc. v. Cuozzo Speed Techs. LLC*, IPR2012-00001, Paper 34, at 2 (PTAB Mar. 14, 2013) (quoting *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,756, 48,760 (Aug. 14, 2012)). To that end, only “confidential information” may be sealed. 35 U.S.C. § 316(a)(7) (“The Director shall prescribe regulations . . . providing for protective orders governing the exchange and submission of confidential information”); *Garmin Int’l*, IPR2012-00001, Paper 34, at 2. The *Consolidated Office Trial Practice Guide* defines confidential information as follows:

2. Confidential Information: The rules identify confidential information in a manner consistent with Federal Rule of Civil Procedure 26(c)(1)(G), which provides for protective orders for trade secret or other confidential research, development, or commercial information.

Office Patent Trial Practice Guide, Patent Trial and Appeal Board (Nov. 2019), p.19.

Under 35 U.S.C. § 316(a)(1), a party may file a document with a concurrent

motion to seal, and the document will be sealed pending the outcome of the motion. *See also* 37 C.F.R. § 42.14. A motion to seal must include a proposed protective order and certify that the moving party has conferred in good faith with the opposing party regarding the scope thereof. 37 C.F.R. § 42.54.

PROTECTIVE ORDER: Here, there is already an existing protective order, **Exhibit 1020**, in place. The Protective Order of Exhibit 1020 was entered by the Board by Paper No. 25 dated January 4, 2024.

III. GOOD CAUSE EXISTS TO SEAL PATENT OWNER'S AND PETITIONER'S CONFIDENTIAL INFORMATION

Exhibits 2071 contains confidential and proprietary sales and revenue information of Patent Owner COLT and **Exhibit 2093** contains confidential and proprietary sales and revenue information of Petitioner QUASAR. Patent Owner's Response incorporates some of the confidential sales information of Petitioner Quasar from Exhibit 2093.

Exhibit 2071 contains specific sales information including specific model, units sold, unit price and total price for each item of Patent Owner's sales to a specific customer. The units sold, unit price and subtotal for each model/item sold is not publicly available and has not been made publicly available.

Exhibit 2093 is Petitioner's Objections and Answers to Patent Owner's

Interrogatory Nos. 1 – 5, served January 12, 2024 (“Petitioner’s Interrogatory Responses”) which contains interrogatories, objections and charts with Petitioner Quasar’s and information provided during the sale of certain assets of non-party Quasar Science LLC (“Old Quasar”) to Petitioner Quasar which information includes sales information including specific models and total annual revenue for each model. The total annual revenue for each model/item sold is not publicly available and has not been made publicly available.

Proprietary Information only retains its value so long as it remains protected from public disclosure. Disclosure may lead to competitive business harm. Accordingly, both Patent Owner and Petitioner require certain protections when using their respective confidential information and, thus in this instance, seek to designate the information as “PROTECTIVE ORDER MATERIAL” to be filed under seal. Essentially the entirety of **Exhibit 2071** contains confidential information as redactions of the financial information would leave blank charts and be meaningless.

The confidential information found in **Exhibit 2093** is made up of financial charts and certain objections directed to the information in those charts. A public version (redacted version) to redact the confidential information is being concurrently filed as **Exhibit 2093 (public version)**. Similarly, Patent Owner will file a redacted public version of the Patent Owner’s Response once Petitioner has had an opportunity to designate its confidential information therein produced by

Petitioner Quasar.

BALANCING OF THE HARMS: Because public disclosure of the contents of these documents, or descriptions of those contents, would disclose the parties' confidential financial information, the parties request that **Exhibits 2071 and 2093** which contain the parties' confidential financial information be designated "PROTECTIVE ORDER MATERIAL" and sealed for the duration of this proceeding. Sales information is normally treated as highly confidential by companies. Just one of the harms if disclosed is that competitors are provided with a road map as to what products generate what amount of revenue and then can focus their competition accordingly.

By contrast, the harm to the public of keeping this information confidential is not as great. While there is a strong public interest in providing access to the entire file, here the confidential sales information is not the entire scope of sales information being put forth by Patent Owner. Patent Owner is disclosing some of its old sales information and an aggregate total of certain sales to Wamco in 2017. Further, Patent Owner is presenting an estimate of sales of Old Quasar which was previously presented in prior file histories by Patent Owner. Accordingly, the public will have significant sales information available to it. Only the sales information provided by Petitioner would be kept confidential. Therefore, the harm to the public is minimized compared to the harm to the Petitioner and Patent

Owner. In view of the above: (1) the information sought to be sealed is truly confidential; (2) there is a concrete harm that would result from public disclosure of the information; (3) there is a need to present the information as part of a showing of commercial success since financial information is normally part of such a showing; and (4) on balance the interest in maintaining confidentiality outweighs the public interest in an open record.

IV. CERTIFICATION REGARDING PUBLIC NON-AVAILABILITY

Patent Owner hereby certifies that, to the best of its knowledge, **none** of the confidential information in **Exhibit 2071** has previously been made publicly available. Petitioner hereby certifies that, to the best of its knowledge, **none** of the confidential information in **Exhibit 2093** has previously been made publicly available.

V. CERTIFICATION REGARDING SCOPE OF PROTECTIVE ORDER

The parties certify that they have conferred in good faith with regard to this motion and with regard to the existing Protective Order of Exhibit 1020. The parties have already agreed and do hereby agree to protect the confidentiality of each other's confidential information in this IPR proceeding and acknowledge their duty to do so under the existing Protective Order, and that the existing protective order provides sufficient protection for their confidential information.

VI. CONCLUSION

For these reasons, the parties respectfully request that the Board grant their motion to seal **Exhibit 2071, 2093 and Patent Owner's Response**, and file public versions of the foregoing Exhibit and Patent Owner's Response redacting only confidential information.

February 7, 2024

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **JOINT MOTION TO SEAL EXHIBITS 2071 AND 2093** was served on February 8, 2024, via email directed to counsel of record for Petitioner at the following:

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