

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.

IPR2023-00613 (Patent 10,411,582 B1)
IPR2023-00614 (Patent 10,566,895 B1)¹

Before GEORGIANNA W. BRADEN, ZHENYU YANG, and
ROBERT J. WEINSCHENK, *Administrative Patent Judges*.

BRADEN, *Administrative Patent Judge*.

ORDER

Denying Petitioner's Motion to Seal
37 C.F.R §§ 42.14 and 42.54

¹ The combined caption is for administrative convenience only and does not indicate that IPR2023-00613 and IPR2023-00614 have been joined. The parties are not authorized to use this caption without express permission of the Board.

INTRODUCTION

Petitioner filed a Motion to Seal (Paper 55, “Mot.”)² that seeks to seal Exhibits 1027–1030 and 1044–1047³ submitted with Petitioner’s Reply. Patent Owner does not oppose Petitioner’s Motion. Mot. 1. Petitioner requests that these documents be sealed under a modified protective order, as granted by the Board on January 4, 2024. *See* Paper 27. For reasons discussed below, Petitioner’s Motion to Seal is *denied* without prejudice.

DISCUSSION

There is a strong public policy in favor of making information filed in an *inter partes* review open to the public, especially because the proceeding determines the patentability of claims in an issued patent and, therefore, affects the rights of the public. Under 35 U.S.C. § 316(a)(1) and 37 C.F.R. § 42.14, the default rule is that all papers filed in an *inter partes* review are open and available for access by the public; a party, however, may file a concurrent motion to seal and the information at issue is sealed pending the outcome of the motion. It is, however, only “confidential information” that is protected from disclosure. 35 U.S.C. § 316(a)(7). In that regard, the Consolidated Office Patent Trial Practice Guide, 84 FR 64280, 19 (Nov. 21, 2019) provides:

The rules aim to 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.

² For purposes of expediency, we cite to Papers filed in IPR2023-00613 (Paper 55). Petitioner filed a similar Motion in IPR2023-00614 (Paper 53).

³ We cite to Exhibits filed in IPR2023-00613 (Exhibits 1027–1030 and 1044–1047). Petitioner filed similar Exhibits in IPR2023-00614 (Exhibits 1027–1030 and 1044–1047).

...

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. § 42.54.

The standard for granting a motion to seal is “for good cause.”

37 C.F.R. § 42.54(a). In Petitioner’s Motion to Seal (Paper 55), Petitioner bears the burden of proof in showing entitlement to the requested relief.

37 C.F.R. § 42.20(c). The Board needs to know why the information sought to be sealed constitutes confidential information.

In its Motion (Paper 55), Petitioner moves to seal Exhibits 1027–1030, because they “are understood to be non-public business papers relating to the business entity Motion Picture Expendables and Services and its interactions with the predecessor to Quasar Science, LLC.” Mot. 1.

Petitioner moves to seal Exhibits 1044–1047 because Patent Owner has indicated the documents “contain[] sensitive information pertaining to Patent Owner’s business.” *Id.* at 1–2. The Motion further indicates that these documents “include sensitive business information unnecessary for public consumption” and “Counsel for Patent Owner has indicated portions of the deposition transcripts (Exhibits 1044–1047) are confidential and a concrete harm would result upon public disclosure.” *Id.* at 3. Neither Petitioner nor Patent Owner give any other reason for requesting to seal the documents. Petitioner has not submitted a redacted version of the Exhibits. Rather, Petitioner has filed the entire Exhibits as “Parties and Board Only.” *Id.*

As discussed previously, there is a strong public policy for making all information filed in an *inter partes* review open to the public. Petitioner, as the moving party, has failed to inform the Board why the information sought

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to be sealed constitutes confidential information, and thus, it fails to carry its burden to demonstrate “good cause” for sealing the documents.

Upon a cursory review of Exhibits 1044–1047, the Exhibits appear to be deposition transitions, the majority of which does not appear to contain confidential information. Nonetheless, we recognize a denial of Petitioner’s Motion would immediately unseal the material Petitioner (and Patent Owner) desires to be placed under seal and the effect would be irreversible. Therefore, rather than denying the Motion outright at this time, we will provide Petitioner two weeks to (1) withdraw the Motion to Seal and request to expunge Exhibits 1027–1030 and 1044–1047, or (2) file a revised Motion to Seal and file public versions of Exhibits 1027–1030 and 1044–1047 with redactions that remove the confidential information (unless the revised motion explains why an entire exhibit is confidential). Furthermore, within one week of this Order, Patent Owner shall advise Petitioner which portions of Exhibits 1044–1047 include confidential information and the reasons in support of that confidentiality claim. *See Consolidated Trial Practice Guide* 112 (Nov. 2019), *available at* <https://www.uspto.gov/sites/default/files/documents/tpgnov.pdf?MURL> (“Within ten days of the receipt of the transcript of the testimony, that person, or that person’s representative, shall advise the opposing party of those portions of the testimony to which a claim of confidentiality is to be maintained, and the reasons in support of that claim.”).

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CONCLUSION

For the foregoing reasons, Petitioner's Motion to Seal (Paper 55) is *denied* without prejudice. It is

ORDERED that by 5PM Eastern on Wednesday, May 29, 2024, Patent Owner shall advise Petitioner which portions of Exhibits 1044–1047 include confidential information and the reasons in support of that confidentiality claim;

FURTHER ORDERED that Petitioner's Exhibits 1027–1030 and 1044–1047 will be made available to the public after 5PM Eastern on Wednesday, June 5, 2024, unless on or prior to that time, Petitioner (1) withdraws the Motion to Seal and requests to expunge Exhibits 1027–1030 and 1044–1047, or (2) files a revised Motion to Seal and files public versions of Exhibits 1027–1030 and 1044–1047 with redactions that remove the confidential information (unless the revised motion explains why an entire exhibit is confidential);

FURTHER ORDERED that any supplement or revision that Petitioner chooses to file should include a detailed discussion that:

Specifies precisely which portions of the information in that exhibits constitute confidential information under the Office Trial Practice Guide quoted above, **and** why; and

Explains why good cause exists to place such confidential information under seal; or

Explains that only the portions of the exhibits that constitutes confidential information under the Office Trial Practice Guide quoted above has been redacted; and

FURTHER ORDERED that the explanation of good cause shall:

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Include a certification that none of the alleged confidential information in Exhibits 1027–1030 and 1044–1047 has been made available publicly.

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