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Columbia Sportswear North America, Inc.*

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF OREGON

PORTLAND DIVISION

**COLUMBIA SPORTSWEAR NORTH
AMERICA, INC.**, an Oregon corporation,

Plaintiff,

v.

**SEIRUS INNOVATIVE ACCESSORIES,
INC.**, a Utah corporation, **VENTEX CO.,
LTD.**, a foreign company, **MICHAEL J.
CAREY**, an individual, **WENDY M. CAREY**,
an individual, **ROBERT (BOB) MURPHY**, an
individual, **KYUNG-CHAN GO**, an
individual, **MAN-SIK (PAUL) PARK**, an
individual, and **JOHN DOE NUMBERS 1-5**,
individuals,

Defendants.

Case No. 3:19-cv-137

**COMPLAINT FOR FRAUD,
RACKETEERING, ABUSE OF
PROCESS, AND CIVIL CONSPIRACY**

DEMAND FOR JURY TRIAL

Plaintiff Columbia Sportswear North America, Inc. (“Columbia”) brings this Complaint
for fraud, civil conspiracy to commit fraud, abuse of process, civil violations of the Federal

Racketeer Influenced and Corrupt Organizations Act (18 U.S.C. § 1964(c)) (“Federal RICO”) and civil violations of the Oregon Racketeer Influenced and Corrupt Organizations Act (ORS 166.725(7)(a)(B)) (“Oregon RICO”) against Defendants Seirus Innovative Accessories, Inc. (“Seirus”), Ventex Co., Ltd. (“Ventex”), Michael J. Carey (“M. Carey”), Wendy M. Carey (“W. Carey”), Robert (Bob) Murphy (“Murphy”), Kyung-Chan Go (“Go”), Man-Sik (Paul) Park (“Park”) and John Doe Numbers 1-5 (collectively “Defendants”), and alleges as follows:

NATURE OF THE CASE

1. This is an action alleging fraud, civil conspiracy to commit fraud, abuse of process, and racketeering, all arising from a scheme between Defendants that was designed and implemented to defraud the United States Patent and Trademark Office (the “Patent Office”) and Columbia.

2. Specifically, Columbia sued Seirus for willful infringement of two of Columbia’s patents after Seirus copied Columbia’s Omni-Heat® Reflective technology (the “Seirus Litigation”). Seirus was statutorily barred from filing petitions with the Patent Office’s Patent Trial and Appeal Board (“PTAB”) to have the patents re-reviewed through a procedure called *inter partes* review (“IPR”). Seirus was also statutorily barred from working through a proxy to file petitions for *inter partes* review. To that end, anybody in privity with Seirus was barred from filing such petitions, as was anyone who would file the petitions where Seirus would be a real party-in-interest in the proceedings.

3. However, as trial approached in the underlying Seirus Litigation in this Court, Seirus and its employees, officers, and directors conspired with Ventex through an unlawful and fraudulent scheme to have Ventex file the petitions on Seirus’s behalf. Seirus in fact paid for the petitions to be filed but Defendants disguised this fact through a sham agreement (the “IPR

Funding Scheme”) that was meant to give the impression that the money was used for “licensing” or “exclusivity” purposes. However, the agreement in fact served only to cloak the transfer of large amounts of money from Seirus to pay Ventex’s legal fees in the IPRs. Noting “the sudden change in pricing of Ventex products in January 2017” the PTAB stated in one of its Orders that Columbia “credibly alleges . . . that, at a minimum, Seirus may have financed Ventex’s conduct of these *inter partes* reviews.”

4. The Defendants (herein, the “Seirus Enterprise”) all knew that Seirus, its privies, and those acting on Seirus’s behalf were statutorily time-barred from filing IPRs on either patent, and they knew that Seirus was both in privity with Ventex and a real party-in-interest in the IPRs. The Seirus Enterprise also knew that if they disclosed the existence of the IPR funding scheme, or if they identified Seirus as being in privity with Ventex or a real party-in-interest in the IPRs, the PTAB would be bound by statute to reject the petitions and would not have instituted review.

5. Nonetheless, as arranged and agreed by the Seirus Enterprise, Ventex filed the IPRs and stated in the IPRs that it was the only real party-in-interest, though Ventex knew this assertion to be false at all material times. Seirus then used the filing of the IPRs and the PTAB’s decision to institute the IPRs as a basis to move to stay trial in the underlying Seirus Litigation then pending in this Court.

6. Ventex, meanwhile, fraudulently litigated the IPRs. When Columbia filed a patent infringement suit against Ventex, in April 2017, Ventex used the filing of the IPRs and the PTAB’s decision to institute the IPRs as a basis to move to stay that litigation as well. This Court granted the stay.

7. In addition to the fraud, the scheme has also now included perjured testimony by Ventex and Park in proceedings before the Patent Office and spoliation of substantial documents for purposes of concealing the conspiracy and its wrongful acts.

8. In January of 2019, after Columbia made the PTAB aware of the Seirus Enterprise's wrongful and unlawful acts, the PTAB vacated the institution of and terminated both of the IPRs brought against Columbia's patents (the "Ventex IPRs"), but not before Columbia spent two years litigating the fraudulently-filed IPRs.

9. As a result of Defendants' unlawful conduct, Columbia has spent hundreds of hours of time and more than \$700,000 defending the fraudulently-filed IPRs and responding to numerous motions to stay filed in this Court, one of which was actually granted, and all of which have caused Columbia to divert its resources from litigating the infringement of its patents by both Seirus and Ventex to litigating baseless allegations and claims at the PTAB and in this Court.

10. By means of this lawsuit, Columbia seeks that all Defendants be jointly and severally found liable to the extent of (i) treble the damages incurred by Columbia due to Defendants' unlawful activity, including attorneys' fees and costs spent defending the IPRs, pursuant to Federal and Oregon State RICO statutes, (ii) attorneys' fees spent bringing this lawsuit, and (iii) **\$20,000,000** or an amount otherwise to be decided by a jury in the form of punitive damages for Defendants' illegal and fraudulent actions.

11. Substantial discovery has already occurred concerning the IPR Funding Scheme at the Patent Office. Numerous briefs have been filed, tens of thousands of documents have been produced, depositions have been taken, including in Oregon, subpoenas have been served, and the PTAB has hosted numerous conference calls on the issue. A substantial amount of the

information concerning the unlawful scheme is subject to a motion to seal pursuant to a proposed protective order in those cases. When discovery opens in this case, or when this Court or the PTAB allow discovery from the IPRs to be used in this case, additional co-conspirators may be named as co-defendants, including attorneys, other corporate executives or others who drafted, negotiated or signed the relevant documents or otherwise participated in the fraudulent IPR Funding Scheme conspiracy.

THE PARTIES

12. Plaintiff Columbia Sportswear North America, Inc. is a corporation organized and existing under the laws of the State of Oregon, with its principal place of business located in Portland, Oregon. Columbia Sportswear North America, Inc. is a wholly-owned subsidiary of Columbia Sportswear Company, a corporation organized and existing under the laws of the State of Oregon, with its principal place of business in Portland, Oregon.

13. Defendant Seirus Innovative Accessories, Inc. is a Utah corporation having a principal place of business located at 13975 Danielson St., Poway, California 92064.

14. Defendant Ventex Co., Ltd. is a foreign company formed under the laws of South Korea, with its principal place of business in Seoul, South Korea. Among other activities, Ventex manufactures and sells textiles, fabrics, and other materials for use in the production of clothing, including outdoor wear. Specifically, Ventex sells a product called MegaHeat RX, which practices the claims of the Omni-Heat® Reflective Patents.

15. Defendant Michael J. Carey resides in the State of California at 3325 Ocean Front Walk C, San Diego, CA 92109-7609, and is the co-founder, controlling shareholder, CEO, President, and a Director of Seirus Innovative Accessories, Inc.

16. Defendant Wendy M. Carey resides in the State of California at 3325 Ocean Front Walk C, San Diego, CA 92109-7609, and is the CFO and a Director of Seirus Innovative Accessories, Inc.

17. Defendant Robert (Bob) Murphy resides in the State of California at 825 W. Beech Street, San Diego, CA 92101, and is Vice President of Seirus Innovative Accessories, Inc.

18. Defendant Kyung-Chan Go resides in South Korea, and is Chief Executive Officer of Ventex Co., Ltd.

19. Defendant Man-Sik (Paul) Park resides in South Korea, and is Vice President of Sales at Ventex Co., Ltd.

20. Defendants John Doe Numbers 1-5 are executives, officers, in-house attorneys, shareholders or other agents of Defendants Seirus Innovative Accessories, Inc. and Ventex Co., Ltd. who participated in the Seirus Enterprise.

JURISDICTION AND VENUE

21. This Court has original subject-matter jurisdiction pursuant to 18 U.S.C. § 1964(c) and 28 U.S.C. § 1331 because this action arises, in part, under the Federal Racketeer Influenced and Corrupt Organizations Act (“Federal RICO”).

22. This Court also has subject-matter jurisdiction pursuant to 28 U.S.C. § 1332 because the amount in controversy exceeds \$75,000, exclusive of interest and costs and there is complete diversity of citizenship between Plaintiff and the Defendants.

23. This Court has jurisdiction over Plaintiff’s related state and common law claims pursuant to the doctrine of supplemental jurisdiction, 28 U.S.C. § 1367.

24. This Court has personal jurisdiction over Defendant Seirus because Seirus has purposefully directed actions at this forum to obtain benefits from the IPR filings supported by

the IPR Funding Scheme. The exercise of jurisdiction over Seirus is reasonable at least because Seirus conspired with Defendant Ventex to fraudulently file IPRs with an objective of staying a then-pending action in this Court on the eve of trial. More specifically, Seirus participated in the Seirus Enterprise while a litigation against it by Plaintiff was pending in this Court. Seirus participated in the Seirus Enterprise, which implemented the IPR Funding Scheme, to disrupt the underlying Seirus Litigation based on false pretense and to provide an opportunity for relitigation of Seirus's invalidity defenses that were then pending before this Court. Seirus then moved this Court to stay the pending litigation against it based on false pretense—the fraudulently-filed IPRs.

25. This Court further has personal jurisdiction over Seirus under 28 U.S.C. § 1965(b) because in any action brought pursuant to the Federal RICO statute in a U.S. District Court, that Court may cause parties residing in another district to be summoned to that district if the “ends of justice require” it. Given these facts, and that no other district has personal jurisdiction over all defendants, the ends of justice require this Court's exercise of personal jurisdiction over Seirus.

26. This Court has personal jurisdiction over Defendant Ventex because Ventex has purposefully directed its conduct at this forum with respect to the IPR Funding Scheme. The exercise of jurisdiction over Ventex is reasonable at least because Ventex conspired with Defendant Seirus to fraudulently file IPRs at the Patent Office, with the objective of staying Seirus's then-pending action in this Court on the eve of trial. Ventex then later moved to stay the later-filed Ventex litigation in this Court based upon the fraudulently filed IPRs. This Court further has personal jurisdiction over Ventex under 28 U.S.C. § 1965(b) because in any action brought pursuant to the Federal RICO statute in a U.S. District Court, that Court may cause

parties residing in another district to be summoned to that district if the “ends of justice require” it. Ventex participated in the Seirus Enterprise, which implemented the IPR Funding Scheme to disrupt the underlying Seirus Litigation based on false pretense and to provide an opportunity for relitigation of Seirus’s invalidity defenses that were then pending before this Court. Ventex also fraudulently moved this Court to stay a pending litigation against it based on fraudulently-filed IPRs.

27. This Court further has personal jurisdiction over Ventex because on December 11-12, 2018, Ventex testified at depositions in Oregon in the IPRs. Specifically, Dr. Kyung-Chan Go, Ventex’s CEO, testified on December 11, 2018; Mr. Man-Sik (“Paul”) Park testified on December 11-12, 2018; and Ventex, through its corporate representative Mr. Park, testified on December 12, 2018. The depositions were in response to, *inter alia*, declarations that Park and Go voluntarily submitted in the IPRs. In support of the Seirus Enterprise and the fraudulently-filed IPRs, at least Mr. Park provided perjured testimony at his deposition in Oregon, as detailed further below.

28. Given these facts and that no other district has personal jurisdiction over all defendants, the ends of justice require this Court’s exercise of personal jurisdiction over Ventex.

29. This Court has personal jurisdiction over Defendant M. Carey because M. Carey has purposefully directed his conduct at this forum with respect to the IPR Funding Scheme. The exercise of jurisdiction over M. Carey is reasonable at least because M. Carey is an officer, director and co-owner of Defendant Seirus, and personally participated in the activities alleged herein. This Court further has personal jurisdiction over M. Carey under 28 U.S.C. § 1965(b) because in any action brought pursuant to the Federal RICO statute in a U.S. District Court, that Court may cause parties residing in another district to be summoned to that district if the “ends

of justice require” it. M. Carey also participated in the Seirus Enterprise, which implemented the IPR Funding Scheme to disrupt the underlying Seirus Litigation based on false pretense and to provide an opportunity for relitigation of Seirus’s invalidity defenses that were then pending before this Court. Under M. Carey’s direction, Seirus also fraudulently moved this Court to stay a pending litigation against it based on fraudulently-filed IPRs. Given these facts and that no other district has personal jurisdiction over all defendants, the ends of justice require this Court’s exercise of personal jurisdiction over M. Carey.

30. This Court has personal jurisdiction over Defendant W. Carey because W. Carey has purposefully directed her conduct at this forum with respect to the IPR Funding Scheme. The exercise of jurisdiction over W. Carey is reasonable at least because W. Carey is an officer, director and co-owner of Defendant Seirus, and personally participated in the activities alleged herein. This Court further has personal jurisdiction over W. Carey under 28 U.S.C. § 1965(b) because in any action brought pursuant to the Federal RICO statute in a U.S. District Court, that Court may cause parties residing in another district to be summoned to that district if the “ends of justice require” it. W. Carey also participated in the Seirus Enterprise, which implemented the IPR Funding Scheme to disrupt the underlying Seirus Litigation based on false pretense and to provide an opportunity for relitigation of Seirus’s invalidity defenses that were then pending before this Court. Under W. Carey’s direction, Seirus also fraudulently moved this Court to stay a pending litigation against it based on fraudulently-filed IPRs. Given these facts and that no other district has personal jurisdiction over all defendants, the ends of justice require this Court’s exercise of personal jurisdiction over W. Carey.

31. This Court has personal jurisdiction over Defendant Murphy because Murphy has purposefully directed his conduct at this forum with respect to the IPR Funding Scheme. The

exercise of jurisdiction over Murphy is reasonable at least because Murphy is an officer of Defendant Seirus and personally participated in the activities alleged herein. This Court further has personal jurisdiction over Murphy under 28 U.S.C. § 1965(b) because in any action brought pursuant to the Federal RICO statute in a U.S. District Court, that Court may cause parties residing in another district to be summoned to that district if the “ends of justice require” it. Murphy also participated in the Seirus Enterprise, which implemented the IPR Funding Scheme to disrupt the underlying Seirus Litigation based on false pretense and to provide an opportunity for relitigation of Seirus’s invalidity defenses that were then pending before this Court. Mr. Murphy was directly involved in the scheme. He ordered fabric from Ventex and Mr. Park pursuant to the IPR Funding Scheme. Given these facts and that no other district has personal jurisdiction over all defendants, the ends of justice require this Court’s exercise of personal jurisdiction over Murphy.

32. This Court has personal jurisdiction over Defendant Go because Go has purposefully directed his conduct at this forum with respect to the IPR Funding Scheme. The exercise of jurisdiction over Go is reasonable at least because Go is an officer of Defendant Ventex and personally participated in the activities alleged herein. This Court further has personal jurisdiction over Go under 28 U.S.C. § 1965(b) because in any action brought pursuant to the Federal RICO statute in a U.S. District Court, that Court may cause parties residing in another district to be summoned to that district if the “ends of justice require” it. Go also participated in the Seirus Enterprise, which implemented the IPR Funding Scheme to disrupt the underlying Seirus Litigation based on false pretense and to provide an opportunity for relitigation of Seirus’s invalidity defenses that were then pending before this Court. This Court further has personal jurisdiction over Go because on December 11, 2018, Go testified at deposition in the

Ventex IPRs in Oregon. Specifically, Go testified in his personal capacity on December 11, 2018. The deposition was in response to a declaration that Go voluntarily submitted in the IPRs. Given these facts and that no other district has personal jurisdiction over all defendants, the ends of justice require this Court's exercise of personal jurisdiction over Go.

33. This Court has personal jurisdiction over Defendant Park because Park has purposefully directed his conduct at this forum with respect to the IPR Funding Scheme. The exercise of jurisdiction over Park is reasonable at least because Park is an officer of Defendant Ventex and personally participated in the activities alleged herein. This Court further has personal jurisdiction over Park under 28 U.S.C. § 1965(b) because in any action brought pursuant to the Federal RICO statute in a U.S. District Court, that Court may cause parties residing in another district to be summoned to that district if the "ends of justice require" it. Park also participated in the Seirus Enterprise, which implemented the IPR Funding Scheme to disrupt the underlying Seirus Litigation based on false pretense and to provide an opportunity for relitigation of Seirus's invalidity defenses that were then pending before this Court.

34. This Court further has personal jurisdiction over Park because on December 11-12, 2018, Park testified at deposition in the Ventex IPRs in Oregon. Specifically, Park testified in his personal capacity on December 11-12, 2018; and as Ventex's corporate representative on December 12, 2018. The depositions were in response to, *inter alia*, a declaration that Park voluntarily submitted in the IPRs. During his deposition, Mr. Park provided perjured testimony in Oregon, as detailed further below. Given these facts and that no other district has personal jurisdiction over all defendants, the ends of justice require this Court's exercise of personal jurisdiction over Park.

35. This Court has personal jurisdiction over Defendants John Doe Numbers 1-5 because they have purposefully directed conduct at this forum with respect to the IPR Funding Scheme. The exercise of jurisdiction over John Doe Numbers 1-5 is reasonable at least because they are executives, officers, in-house attorneys, shareholders or other agents of Defendant Ventex and Defendant Seirus and personally participated in the activities alleged herein. This Court further has personal jurisdiction over John Doe Numbers 1-5 pursuant to 28 U.S.C. § 1965(b).

36. Venue is proper in this District pursuant to 28 U.S.C. §1391(b)(2) because a substantial part of the events or omissions giving rise to Plaintiff's claims occurred within this judicial district. Venue is further proper in this District pursuant to 18 U.S.C. § 1965(a) because each defendant is found and/or transacts his affairs in this District given each defendant's participation in the Seirus Enterprise, as alleged above. Venue is further proper in this District because on December 11-12, 2018, Defendants Ventex, Go and Park testified at deposition in the Ventex IPRs in Oregon. Specifically, Go testified in his personal capacity on December 11, 2018. Park testified in his personal capacity on December 11-12, 2018, and as Ventex's corporate representative on December 12, 2018. The depositions were in response to, *inter alia*, declarations that Park and Go voluntarily submitted in the IPRs. Venue is also appropriate in this District pursuant to 28 U.S.C. § 1391(c)(3) or the alien-venue rule as codified in

FACTUAL BACKGROUND

I. INTER PARTES REVIEW AND THE TIME BAR

37. This case revolves around a procedure established by Congress as part of the Leahy-Smith America Invents Act ("AIA"). The AIA created a new body within the Patent Office called the Patent Trial and Appeal Board ("PTAB"), which is based in Alexandria,

Virginia. The AIA also created *inter partes* reviews (“IPR”), a trial procedure conducted before the PTAB, which allows the opportunity for third parties to seek to invalidate issued United States patents.

38. The AIA provides that any “person who is not the owner of a patent may file with the Office a petition to institute an inter partes review of the patent.” However, there is a critical exception.

39. 35 U.S.C. § 315(b) provides that an IPR “may not be instituted if the petition requesting the proceeding is filed more than 1 year after the date on which the petitioner, *real party in interest*, or *privity* of the petitioner is served with a complaint alleging infringement of the patent.”

40. The petitioner is required, pursuant to 35 U.S.C. § 312(a)(2), to identify all real parties-in-interest in the IPR.

41. This requirement functions to ensure proper application of the statutory estoppel provisions, which seeks to protect patent owners from harassment via successive petitions by the same or related parties, to prevent parties from having a second bite at the apple, and to protect the integrity of both the Patent Office and Federal Courts by assuring that all issues are promptly raised and vetted.

42. If the petitioner identifies as a real party-in-interest a party that is time-barred under 35 U.S.C. § 315(b), the PTAB must, by statute, deny the petition.

43. After the Petition is filed, the PTAB decides whether the statutory conditions to a viable petition are met and whether to institute review, which typically occurs within about six months of the filing of the Petition. If the PTAB decides to institute review, the PTAB is under the statutory obligation to issue a final determination not later than 1 year after the date of

institution, except that the Director may, for good cause shown, extend the 1-year period by not more than 6 months.

44. The IPR process has been very beneficial to many parties accused of patent infringement. For example, as of July 31, 2015, 66% of PTAB cases that went to a final written decision resulted in a finding of invalidity of all instituted claims. Only 9% of instituted IPRs resulted in a finding that no asserted claims were invalid.

45. Moreover, courts throughout the country routinely stay underlying patent infringement litigations after the PTAB institutes IPRs, allowing the petitioner's invalidity challenge to proceed and be completed first, before the patent owner has the opportunity to press its case. This additional factor heavily incentivizes accused infringers to file IPRs after they have been sued for patent infringement.

46. One factor that distinguishes traditional litigation from litigation before the PTAB is the significant limitation on discovery with respect to the latter. Discovery in practice before the PTAB is very limited. The Code of Federal Regulations governing IPR procedures divides discovery into "routine discovery" and "additional discovery." "Routine discovery" is limited to exhibits cited in papers or in testimony, cross examination of declarants and "relevant information that is inconsistent with a position advanced by the party during the proceeding."

47. Any other discovery falls into the category of "additional discovery." Additional discovery must be sought, and can only be obtained, through discretionary motion practice before the PTAB. Specifically, a party seeking "additional discovery" must (1) meet and confer with the opposing side, (2) send an email to the PTAB requesting a conference call, (3) request leave on the conference call to file a motion to seek the additional discovery, and only if such permission is granted, (4) file a motion seeking the additional discovery. The PTAB decides

whether to grant the motion for additional discovery based on factors known as the “Garmin factors.” These factors are: (1) more than a possibility and mere allegation that something useful will be discovered; (2) requests that do not seek other party’s litigation positions and the underlying basis for those positions; (3) ability to generate equivalent information by other means; (4) easily understandable instructions; and (5) requests that are not overly burdensome to answer.

48. Unless the PTAB finds in favor of the movant on these five factors, the motion for additional discovery will be denied. This procedure for seeking and obtaining discovery is heavily weighted against the party seeking discovery.

49. In particular, this procedure is heavily weighted against patent owners who suspect that the petitioner may be time-barred pursuant to 35 U.S.C. § 315(b) because either the petitioner is in privity with a time-barred patent infringement defendant, or the time-barred patent infringement defendant is a real party-in-interest in the IPR. The discovery procedure makes it very difficult for the patent owner to obtain discovery that may show that the petitioner and the time-barred infringer are in privity, or that the time-barred infringer is a real party-in-interest.

50. The AIA, combined with the Code of Federal Regulations, the PTAB’s Trial Practice Guide, and the PTAB’s historical procedures, rely heavily on participants in the process acting in good faith. But parties can game the system to shield bad acts and unlawful activity.

51. For example, an accused infringer that is time-barred from filing an IPR has strong incentives to conspire with another party to have the IPR petition filed on its behalf, but to have the proxy-petitioner fraudulently declare in the petition that it is the sole real party-in-interest, failing to identify the accused infringer as a real party-in-interest. And the discovery

procedures, which significantly favor the petitioner and the accused infringer, help shield the unlawful, fraudulent scheme from the patent owner and the PTAB.

52. As explained below, this case involves just such a scheme.

II. COLUMBIA'S OMNI-HEAT® REFLECTIVE TECHNOLOGY

53. Columbia is an outdoor apparel company. In the past two decades, it has invested heavily in developing innovative new products. One such innovative product is Omni-Heat® Reflective, a technology in which the innermost surface of garments is partially covered in reflective foil, which directs heat back to the user. By only partially covering the surface with reflective foil, the garment is still able to breathe—i.e., able to transmit moisture vapor.

54. Columbia obtained patents protecting its Omni-Heat® Reflective technology, including U.S. Patent Nos. 8,424,119 (“the ’119 patent”), and 8,453,270 (“the ’270 patent,” and collectively the “Omni-Heat® Reflective Patents”).

55. Columbia uses its Omni-Heat® Reflective technology in a number of products, including jackets, gloves, mittens, hats, socks, liners, and other apparel and accessories.

56. The Omni-Heat® Reflective line of products has been a substantial success for Columbia, resulting in over \$1.5 billion in sales since it was launched in 2010, along with widespread industry recognition.

III. SEIRUS/VENTEX'S COPY OF COLUMBIA'S PATENTED TECHNOLOGY

57. Seirus is a winter accessories company. It sells gloves, mittens, hats, socks, liners, and other accessories. In 2012, Seirus launched a plan to copy Columbia's patented Omni-Heat® Reflective technology. It started by contacting Columbia's contract suppliers of the custom fabric used for its Omni-Heat® Reflective line of products. Ex. 1 at 3.

58. Ultimately, Seirus entered into a relationship with Ventex, a Korean textile manufacturer and broker that touted its ability to supply base fabrics with laminated reflective foil. Ventex called that fabric “MegaHeat RX” and, in March of 2013, Seirus entered into a Vendor Agreement with Ventex by which Seirus agreed to buy that fabric from Ventex. *See generally Columbia Sportswear North America, Inc. v. Ventex Co., Ltd.*, Case No. 3:17-cv-00623-SI (D. Or.), Dkt. 1, ¶¶ 31, 34; *see also* Ex. 2, p. 5. Seirus called its new, copied line of products “HeatWave.”

59. Seirus buys the MegaHeat RX fabric from Ventex and has it shipped to Seirus’s manufacturers in Asia to have garments made. Ex. 1 at 3.

60. Seirus has sold and sells its “HeatWave” line of products in Oregon.

IV. THE SEIRUS LITIGATIONS

61. On December 4, 2013, Columbia filed a lawsuit against Seirus in the Western District of Washington (“the Washington Action”) alleging that Seirus’s HeatWave products infringed one of Columbia’s design patents. *See Columbia Sportswear Co. v. Seirus Innovative Accessories, Inc.*, Case No. 2:13-cv-2175-RSM (W.D. Wa.), Dkt. 1, ¶ 9.

62. On April 2, 2014, in the Washington Action, Columbia served Seirus with an amended complaint alleging infringement of the Omni-Heat® Reflective Patents. On April 3, 2014, Seirus waived service of a summons of the amended complaint.

63. In January 2015, Columbia voluntarily dismissed the Washington Action and filed an action in the District of Oregon (“the Seirus Oregon Action”) alleging infringement of the Omni-Heat® Reflective Patents. *See Columbia Sportswear North America, Inc. v. Seirus Innovative Accessories, Inc.*, No. 3:15-cv-64 (D. Or.).

64. By April 3, 2015, Seirus had waived its right to file IPRs against the Omni-Heat® Reflective Patents, having been served a complaint asserting infringement of those patents one year prior. The time bar also applied to anyone in privity with Seirus, and further applied to any petition for which Seirus would be a real party-in-interest.

65. Between January 2015 and January 2017, Columbia and Seirus litigated the case toward trial. Pursuant to the scheduling order in the Seirus Oregon Action, discovery was scheduled to close in May 2016. By that date, the parties had exchanged hundreds of thousands of pages of documents, and numerous witnesses from both parties had been deposed.

66. The parties completed the claim construction process and had a *Markman* hearing in May 2016. The Court issued final claim constructions in August 2016.

67. The parties then exchanged voluminous expert reports, and completed depositions of both parties' experts.

68. Both parties moved for summary judgment and Columbia filed a *Daubert* motion to exclude testimony from Seirus's technical expert. Summary judgment briefing was completed on November 3, 2016. Oral argument on the summary judgment motions was originally scheduled for December 9, 2016.

69. By January 2017, Columbia and Seirus were on the verge of trial, with pretrial briefing deadlines imminent. Seirus had already been found liable for infringement of one of Columbia's design patents, and had stipulated that the patent was not invalid. Thus, trial was going to invariably result in a financial judgment in Columbia's favor, and Seirus faced the prospect that it would be liable to pay its total profits from its sales of all of its HeatWave products.

70. The pretrial conference was scheduled for April 3, 2017, and trial was scheduled to commence on April 11, 2017.

V. THE IPR FUNDING SCHEME

71. As trial approached, Seirus sought various ways of continuing the trial date.

72. Seirus also regretted its failure to file IPR petitions concerning the two patents. It desired that IPRs be filed against the two Omni-Heat® Reflective Patents. But Seirus knew that it, and any person in privity with it, was time-barred from filing IPR petitions pursuant to 35 U.S.C. § 315(b).

73. Seirus also knew that no IPRs could be filed if Seirus was a real party-in-interest in the outcome of the IPRs.

74. To avoid these clear statutory bars to filing an IPR petition, in October 2016, Seirus and Ventex agreed that *Ventex* would file IPR petitions against the '119 and '270 patents on Seirus's behalf. But Seirus and Ventex knew that this was unlawful under 35 U.S.C. § 315(b), because Seirus and Ventex were in privity with respect to any IPRs, and Seirus would also be a real party-in-interest with respect to such IPRs.

75. To disguise these facts, the parties entered into a written agreement by which Seirus would pay for the IPRs through a complicated financial scheme. But the agreement was a sham, meant to disguise the fact that Seirus would be paying for the IPRs. Ventex would then fraudulently assert that it was the only real party-in-interest with respect to the IPRs.

76. Defendants Seirus and Ventex fraudulently called this agreement the "Exclusive Manufacturing Agreement." Ex. 3 at 2-3.

77. The IPR Funding Scheme involved two components. First, Seirus transferred to Ventex a cash advance in November 2016 that was intended to give Ventex funds to pay for the

drafting of the IPR petitions. Second, Seirus paid Ventex a fee per-yard of fabric over an extended period of time, called a “HeatWave Surcharge” or a “HeatWave Exclusive License Fee,” to continue to pay for Ventex’s attorneys’ fees and costs incurred in litigating the IPRs. Ex. 4, pp. 3-4. Seirus would recoup the initial fee advance through a concealed “discount” from all subsequent purchase orders. *Id.* at 4.

78. None of Seirus’s purchase orders reflected the “discount” it was receiving.

79. The IPR Funding Scheme was intended to give Ventex an infusion of cash two months before the IPRs were filed, with following payments disguised as a per-yard fabric fee over an extended period of time.

80. Purchase orders reflecting Seirus’ purchases of fabric from Ventex between 2013 and 2018 show these fees and increased pricing on the fabric that coincide with the filing of the Ventex IPRs. For example, purchase orders from 2013-2016 reflect only fabric purchases. However, Seirus issued two purchase orders within days of Ventex’s filing of the first of the Ventex IPRs that included the new per-yard fee for fabric listed as a “HEATWAVE SURCHARGE” with an item number of “HWSUR.” The new fee amounted to nearly a 100% increase on the price of the fabric. Ex. 1 at 6-7; *see also* Ex. 11, pp. 5-6.

81. The same day the purchase orders were issued, Seirus issued revised purchase orders changing the name of the “HeatWave Surcharge” to “HeatWave Exclusive License Fee,” but the item number remained “HWSUR.” Ex. 1 at 7.

82. This was the first time Seirus had ever paid a “surcharge” or “license fee” while purchasing fabric from Ventex. The fabric was the same HeatWave fabric Seirus had been purchasing for more than 4 years. *Id.* at 8.

83. Seirus has continued to pay the “surcharge,” later re-designated as a “license fee,” ever since, including immediately before oral arguments occurred in the IPRs. The total of the sums paid by Seirus closely approximates the amount Ventex anticipated paying in legal fees for the two Ventex IPRs. *Id.* at 8-9.

84. The Exclusive Manufacturing Agreement entered into by Seirus and Ventex as part of the IPR Funding Scheme was not commercially reasonable or plausible as a license agreement. The Exclusive Manufacturing Agreement has no commercially reasonable basis other than to pay for the Ventex IPRs. Instead, the Exclusive Manufacturing Agreement was a sham meant to disguise the agreement for Seirus to fund the Ventex IPRs as a payment for value, though it was not. *See* Ex. 11, pp. 5-6.

85. By way of example, in September 2017, at the time of trial in the patent infringement litigation between Columbia and Seirus, Seirus had been selling its HeatWave line of products for approximately four years. The total Heatwave sales through February 28, 2017 were approximately \$7.3 million. The jury found that Seirus’s total profits on these sales were \$3.1 million. The parties stipulated that \$6.2 million of these sales were for products alleged to infringe the ’270 patent.

86. During that trial, Seirus’ expert, Carrie Distler, opined that, given these circumstances, the reasonable royalty that Seirus and Columbia would have entered into for a license to practice the ’270 patent would have amounted to a total of \$119,000, covering all \$6.2 million of infringing sales between 2013 and 2017.

87. Notably, Ventex does not make the HeatWave fabric itself. It buys base fabric off the shelf from textile manufacturers and uses standard lamination equipment and techniques to apply foil printing to the base fabric. The same fabric can be purchased from other sources and

foil can be applied by numerous other vendors. Thus, any agreement for “exclusivity” from Ventex has little to no apparent value. It certainly is not worth hundreds of thousands of dollars in the face of Seirus’s own expert’s opinion that the patents covering the finished product are worth only \$119,000 for \$6.2 million in sales.

88. Further, notwithstanding the alleged “exclusive license,” Ventex has sold its MegaHeat RX fabric (which Seirus calls “HeatWave”) to other companies.

89. The hundreds of thousands of dollars Seirus paid to Ventex between 2016 and the present far exceeds any commercially reasonable amount Seirus would have agreed to pay Ventex for any alleged exclusivity to MegaHeat RX fabric.

90. Defendant M. Carey, as Seirus’s Co-Founder, Chairman of the Board, Director, and CEO, and W. Carey, as Seirus’s Director and CFO, would have had to have approved such a commercial arrangement. M. Carey and W. Carey also would have known that the arrangement was facially unreasonable, and therefore knew or were willfully blind that the arrangement was a sham and a cover for Seirus to pay for the Ventex IPRs. M. Carey and W. Carey therefore knew or were willfully blind to the IPR Funding Scheme.

VI. THE VENTEX IPRS AGAINST THE OMNI-HEAT® REFLECTIVE PATENTS

91. In January 2017, to Columbia’s astonishment, Ventex filed two petitions for IPR of the ’119 and ’270 patents.

92. Specifically, Ventex electronically filed its petition for IPR of the ’119 patent on January 11, 2017 through the PTAB’s EFS-Web. Filings at the PTAB, including the initial filing of a petition for IPR and any subsequent filings, are made through the PTAB’s electronic filing system, “EFS-Web.”

93. The PTAB assigned IPR No. 2017-00651 to Ventex's petition for IPR of the '119 patent.

94. Ventex electronically filed its petition for IPR of the '270 patent on January 27, 2017 through the PTAB's EFS-Web.

95. The PTAB assigned IPR No. 2017-00789 to Ventex's petition for IPR of the '270 patent.

96. Ventex also served both petitions, which contained false or fraudulent statements, on Columbia's counsel of record concerning the '119 and '270 patents in Oregon.

97. As of January 2017, Columbia had not sued, threatened to sue, or even contacted Ventex about any alleged infringement of the '119 and '270 patents. Nor, to its knowledge, had Columbia sued or threatened to sue any other Ventex customer besides Seirus for infringement of the '119 or '270 patents.

98. At the time the Ventex IPRs were filed in January 2017, a "real party-in-interest" was defined by the Patent Office as "the party that desires review of the patent," who may be "the petitioner itself, and/or it may be the party or parties at whose behest the petition has been filed." 77 Fed. Reg. 48759.

99. In each of the petitions, Ventex represented and alleged that it was the only real party-in-interest.

100. But Ventex filed the Ventex IPRs at the behest of Seirus and with funding from Seirus, who desired review of the Omni-Heat® Reflective Patents for the purpose of staying and disrupting the Seirus Oregon Action.

101. Thus, Seirus was and is clearly a real party-in-interest and was in privity with Ventex, and should have been named as such. Moreover, Seirus and Ventex both knew that Seirus in fact was a real party-in-interest and in privity with Ventex.

102. Ventex's failure to identify a real party-in-interest, Seirus, was fraudulent and was done with the purpose and intent to avoid or evade the time limitations imposed by 35 U.S.C. § 315(b).

103. At all times relevant hereto, Ventex and all other Defendants knew that Ventex was not the only real party-in-interest to the Ventex IPRs.

104. At all times relevant hereto, Ventex and all other Defendants knew that Seirus was a real party-in-interest to the Ventex IPRs.

105. At all times relevant hereto, Ventex and all other Defendants knew that Ventex was under a statutory obligation to identify Seirus as a real party-in-interest to the Ventex IPRs when it filed its petitions.

106. The PTAB's Trial Practice and Procedure Guide requires that documents filed with the PTAB be signed in accordance with 37 CFR § 11.18(a). 37 CFR § 42.6(a)(4). 37 CFR § 11.18(a) states that all documents must be signed in compliance with 37 CFR § 1.4(d). 37 CFR § 1.4(d)(4) states that "presentation to the Office (whether by signing, filing, submitting, or later advocating) of any paper by a party constitutes certification under section 11.18(b)"; and that "violations of 11.18(b)(2) may result in sanctions under 11.18(c)."

107. 37 CFR § 11.18(b) states:

by presenting to the Office . . . (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that –

(1) All statements made therein of the party's own knowledge are true, all statements made therein on information and belief are believed to be true,

and all statements made therein are made with the knowledge that *whoever, in any matter within the jurisdiction of the Office, knowingly and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or knowingly and willfully makes any false, fictitious, or fraudulent statements or representations, or knowingly and willfully makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001 and any other applicable criminal statute*, and violations of the provisions of this section may jeopardize the probative value of the paper; and

(2) To the best of the party's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, (i) The paper is not being presented for any improper purpose, such as to harass someone or to cause unnecessary delay or needless increase in the cost of any proceeding before the Office; (ii) The other legal contentions therein are warranted by existing law or by a nonfrivolous argument for the extension, modification, or reversal of existing law or the establishment of new law; (iii) The allegations and other factual contentions have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery; and (iv) The denials of factual contentions are warranted on the evidence, or if specifically so identified, are reasonably based on a lack of information or belief.

(emphasis added).

108. Thus, a violation of the certification required by 37 CFR § 11.18(b)(1) for an act such as willfully making false or fraudulent statements could subject the violator to, e.g., criminal perjury or criminal fraud charges.

109. Further, 37 CFR § 11.18(c) states that “[v]iolations of any of paragraphs (b)(2)(i) through (iv) of this section are . . . subject to such sanctions or actions as deemed appropriate by the USPTO Director”

110. At all times relevant hereto, Ventex and all other Defendants knew that Ventex, by filing its petitions for IPRs and all subsequent papers in those IPRs, was under an obligation pursuant to 37 CFR § 11.18(b)(2) to certify that “[a]ll statements made therein” were “true,” and

“with the knowledge that whoever, in any matter within the jurisdiction of the Office, knowingly

and willfully falsifies, conceals, or covers up by any trick, scheme, or device a material fact, or knowingly and willfully makes any false, fictitious, or fraudulent statements or representations, or knowingly and willfully makes or uses any false writing or document knowing the same to contain any false, fictitious, or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001 and any other applicable criminal statute, and violations of the provisions of this section may jeopardize the probative value of the paper”; and to certify that, e.g., the papers were “not being presented for any improper purpose.”

111. At all times relevant hereto, Ventex and all other Defendants knew that Ventex, in filing its petitions, was defrauding both Plaintiff and the PTAB by intentionally omitting Seirus as a real party-in-interest to the Ventex IPRs.

112. Had Ventex identified Seirus as a real party-in-interest, the PTAB would have been statutorily required to deny institution based on the complaint served upon Seirus in the underlying Seirus Litigation in April 2014.

113. Ventex thus violated the certification requirements of 37 CFR §§ 11.18(b)(1) and (b)(2) by filing its petitions, and subsequently with each filing it made for the IPRs at the PTAB.

114. Columbia filed Patent Owner Preliminary Responses and Sur-Replies to the Ventex IPRs in April and May 2017, which included as exhibits expert declarations, among other things. Columbia incurred significant costs and fees related to filing its preliminary responses and related papers in the Ventex IPRs.

115. Columbia’s Patent Owner Preliminary Responses alleged, *inter alia*, that Ventex was statutorily time-barred based on apparent mutual collaboration between Ventex and Seirus.

116. Ventex argued that any “collaboration” between it and Seirus in either the Seirus Oregon Action or the Ventex IPRs was merely to ensure compliance with the protective order by Columbia. That was false.

117. Ventex had an obligation to produce documents inconsistent with its position that there is no privity between it and Seirus and that Ventex was the sole real party-in-interest as “routine discovery” under 37 CFR § 42.51(b)(1)(iii). Ventex knowingly and intentionally failed to do so, with the intent to defraud.

118. Ventex was also obligated to notify the PTAB and Columbia within 21 days upon learning of any change of information relating to real parties-in-interest by filing an updated “mandatory notice.” 77 Fed. Reg. at 48759.

119. Ventex has never filed an updated mandatory notice in the Ventex IPRs revising its identification of real parties-in-interest to the Ventex IPRs.

120. On July 26, 2017, the PTAB instituted trial on the Ventex IPRs.

121. The PTAB initiated trial in the Ventex IPRs in part based on Ventex’s false representations that it was the only real party-in-interest.

VII. THE IPR FUNDING SCHEME FALTERS, AND VENTEX DEMANDS MORE MONEY TO PAY FOR THE IPRS

122. The IPR Funding Scheme was so complicated that both parties ended up keeping a separate, off-the-record set of books to keep track of the payments. Ex. 4, p. 4.

123. In one communication, Seirus apologized to Ventex, writing, “I understand this is confusing as it is on my end as well with various deductions coming from various deposits and discounts.” *Id.*

124. By November 22, 2017, tracking the scheme had gotten so messy that Seirus ended up revealing and sending Ventex its independent spreadsheet. *Id.*

125. In October 2017, after Seirus had paid some of the “License Fee,” Ventex suggested that it may need to change the “fee.” *Id.* at 4-5. During confirmations of 2018 fabric prices, Ventex wrote, “Further discussion will be required for ‘HEATWAVE EXCLUSIVE LICENSE FEE’ for 2018.” *Id.* at 5. This would be entirely inconsistent with any agreement for an actual license fee, but is consistent with reimbursement of unpredictable counsel fees and litigation costs. *Id.*

126. By late 2017, Ventex urgently needed more money from Seirus to pay its attorneys for legal fees in the Ventex IPRs. *Id.*

127. In November 2017, Defendant Park wrote to Defendant Murphy, “We hope you to be able to place us more order, because we are still hungry.” *Id.*

128. That was followed up on December 3, 2017 with an additional request asking for an “additional order as soon as possible.” *Id.* And a week later, with greater urgency, “Please give your additional order as soon as possible. We almost die here . . .” *Id.*

129. Murphy arranged for an order of additional yards of fabric. *Id.* Park wrote back, “Please be noted that we have got the . . . yd order last week, but it is absolutely not enough. We need much more order about . . . yd in this week. *Id.* Another Ventex employee who was copied on the email sent a follow-up email to Park in the same thread: “COVINGTON is requesting to fix the correct payment date. We need SEIRUS to clear this up as soon as possible.” *Id.* at 5-6. Park wrote back, “As you well know . . . I’m feeling pressured.” *Id.* at 6. “COVINGTON” is a reference to Covington & Burling LLP, the law firm Ventex used for filing and litigating the IPRs.

130. Thus, Ventex needed more “license fee” money from Seirus to pay Covington’s legal bills in these IPRs, and Ventex suggested that Seirus knew that this was the purpose for the

payments, and that Seirus needed to fix the pending deficit that was accruing with respect to Ventex's legal fees. *Id.*

131. To resolve the fee deficit, the next day, Ventex wrote to Seirus and asked, "Can you please help make advance payment for Heatwave Exclusive License fee" for five purchase orders where payment was not yet due. *Id.* Seirus promptly agreed to pay a "fee" advance without any documented explanation of this extraordinary request. *Id.*

132. Similarly, in April 2018, immediately before the final hearing in the Ventex IPRs, Ventex wrote to Seirus asking "[w]ould it be possible to make advance payment for Heatwave exclusive fee . . . for PO 416305." *Id.* Seirus's director and CFO, W. Carey, agreed to advance the payment, and the money was promptly wired without further inquiry. *Id.*

133. There is no reasonable, legitimate business reason why Seirus would have advanced money to Ventex for a "license fee."

VIII. SEIRUS'S FRAUDULENT USE OF THE VENTEX IPRS

134. Seirus (and all other Defendants) knew that the Ventex IPRs were fraudulently filed.

135. To wit, Seirus (and all other Defendants) knew that Ventex filed the Ventex IPRs at Seirus's behest.

136. Seirus (and all other Defendants) also knew that Seirus should have been identified as a real party-in-interest to the Ventex IPRs.

137. Notwithstanding, Seirus, at the direction of Defendants M. Carey, W. Carey and Murphy, attempted to use the fraudulently filed Ventex IPRs, which Seirus had funded and participated in filing, for its own benefit in the Seirus Oregon Action.

138. Soon after the Ventex IPRs were filed, on February 7, 2017, *Seirus* notified the court in the *Seirus Oregon Action*, via the District of Oregon’s Electronic Case Filing (“ECF”) system, that the Ventex IPRs had been filed. *See Columbia Sportswear North America, Inc. v. Seirus Innovative Accessories, Inc.*, No. 3:15-cv-64 (D. Or.), Dkt. 136.

139. On August 1, 2017, after the PTAB instituted the Ventex IPRs, *Seirus* filed a motion via ECF, requesting an expedited hearing “to stay or, in the alternative, to continue the trial date” pending determinations in the two Ventex IPRs. *See Columbia Sportswear North America, Inc. v. Seirus Innovative Accessories, Inc.*, No. 3:15-cv-64 (D. Or.), Dkt. 176.

140. Columbia filed a response to the motion to stay on August 15, 2017, and attended a motion hearing on September 1, 2017. Columbia incurred legal fees and costs due to *Seirus*’s motions.

141. At that motion hearing on September 1, 2017, *Seirus* again moved the court to stay the case until the PTAB issued its Final Written Decisions in the Ventex IPRs.

142. At all times discussed herein, *Seirus* and all other Defendants knew that *Seirus* was a real party-in-interest to the Ventex IPRs.

143. At all times discussed herein, *Seirus* and all other Defendants knew that Ventex had not filed any updated mandatory notices identifying *Seirus* as a real party-in-interest.

144. At all times discussed herein, *Seirus* and all other Defendants knew that Ventex, as the petitioner in the Ventex IPRs, was obligated to identify any real party-in-interest, and that Ventex had intentionally failed to do so.

145. Thus, *Seirus*’s filing of the motions to stay in the *Seirus Oregon Action*, while *Seirus* and the other Defendants were actually aware that the Ventex IPRs were filed and being

litigated fraudulently, was itself fraudulent and was done with the purpose and intent to delay trial in the Seirus Oregon Action.

IX. VENTEX'S FRAUDULENT USE OF THE VENTEX IPRS

146. On April 20, 2017, Columbia filed a lawsuit in the District of Oregon against Ventex ("the Ventex Oregon Action"), alleging, among other things, infringement of the '119 patent and the '270 patent based on Ventex's manufacture, sale, and importing into the U.S. of its MegaHeat RX fabrics. *See Columbia Sportswear North America, Inc. v. Ventex Co., Ltd.*, Case No. 3:17-cv-00623-SI (D. Or.), Dkt. 1, ¶ 1.

147. Ventex did not file an Answer to Columbia's Complaint in the Ventex Oregon Action.

148. On November 6, 2017, rather than answering Columbia's Complaint, Ventex filed a motion to stay the Ventex Oregon Action until the PTAB issued final written decisions in the Ventex IPRs. *See Columbia Sportswear North America, Inc. v. Ventex Co., Ltd.*, Case No. 3:17-cv-00623-SI (D. Or.), Dkt. 17 at 1.

149. Ventex filed this motion to stay knowing that the Ventex IPRs had been filed fraudulently.

150. Columbia incurred costs and fees related to Ventex's motion to stay.

151. Ventex's motion to stay was granted on November 9, 2017, and the Ventex Oregon Action is currently stayed.

152. Had Ventex not fraudulently filed the Ventex IPRs, and had it not used those fraudulent filings as a basis to request a stay, the Ventex Oregon Action would not be stayed.

X. COLUMBIA’S DISCOVERY OF THE IPR FUNDING SCHEME

153. Between July 26, 2017 and now, Columbia has attempted to obtain discovery pertaining to the relationship between Ventex and Seirus and the IPR Funding Scheme.

154. Columbia’s initial attempts to obtain such discovery were denied by the PTAB.

155. On July 25, 2018, the PTAB issued an Order in the Ventex IPRs extending for good cause its deadline to issue its Final Written Decisions. *See, e.g. Ventex Co., Ltd. v. Columbia Sportswear North America, Inc.*, IPR2017-00651, Paper 64 at 2.

156. The PTAB then authorized Columbia to file a new motion for additional discovery concerning whether Seirus was in privity with Columbia or was a real party-in-interest. On September 27, 2018, the PTAB granted Columbia’s motion. *See, e.g.*, IPR2017-00651, Paper 68 at 2-3 & Paper 73.

157. On October 4, 2018, Ventex produced 24,406 pages of communications between Seirus and Ventex. Ventex explained in the production cover letter that Ventex had produced all communications between Ventex and Seirus, “without limitation by subject matter.” Ex. 5. However, Ventex knew that representation was false and intentionally made. The production did not contain at least a copy of the October 21, 2016 Exclusive Manufacturing Agreement. Nor did the production contain emails between Seirus and Ventex predating the agreement, emails from within Ventex discussing the agreement, drafts of the agreement, notes concerning the agreement, or any other document describing the agreement.

158. It was only after Columbia discovered the IPR Funding Scheme and brought it to the PTAB’s attention that Ventex then produced 2000 additional pages of previously-concealed communications between Ventex and Seirus that were directly relevant to the IPR Funding Scheme. Ex. 6, p. 3.

159. The Exclusive Manufacturing Agreement was not part of those 2000 additional pages Ventex produced because Park and other Ventex employees deleted or destroyed every copy of that agreement in Ventex's possession, along with every email and other document that described it. *Id.* at 3-4.

160. Ventex also deleted the email accounts of employees who negotiated the Exclusive Manufacturing Agreement, decided to file the IPRs, and hired Covington. *Id.* at 4.

161. Columbia does not know what other responsive documents Ventex and the Seirus Enterprise Defendants are concealing or have been destroyed.

162. Columbia nonetheless identified to the PTAB the sudden and significant increase in pricing of Ventex products in January 2017 reflected in the fraudulent invoices, which invoices the PTAB found to "credibly" show that, "at a minimum, Seirus may have financed Ventex's conduct of" the Ventex IPRs. Ex. 7 at 5.

XI. DEFENDANTS' EFFORTS TO UNLAWFULLY CONCEAL THE IPR FUNDING SCHEME

163. All of the co-conspirators in the Seirus Enterprise agreed to keep the IPR Funding Scheme secret.

164. Seirus never produced the October 21, 2016 Exclusive Manufacturing Agreement in the Seirus Oregon Action, though it was obligated to produce all such documents. Instead, Seirus unlawfully withheld that agreement.

165. Ventex and Park continuously denied the existence of the October 21, 2016 written agreement.

166. For example, on November 6, 2018, the PTAB granted Columbia's motion to take additional discovery relating to whether Seirus is a real party-in-interest to the Ventex IPRs.

167. Part of that additional discovery included a deposition of Defendant Park. That deposition took place on November 9, 2018 and lasted for ten hours on the record.

168. During that deposition, Park gave sworn testimony that, e.g., Ventex and Seirus never entered into a written agreement regarding the “surcharge” or “license fee” for the HeatWave fabric.

169. Park’s testimony was false. Park was personally aware of the arrangement, and exchanged emails with Seirus concerning the agreement. Ex. 3 at 2.

170. The same day that Park provided knowingly false testimony concerning the agreement, and unbeknownst to Park, Seirus produced a copy of the Exclusive Manufacturing Agreement pursuant to a subpoena in the IPRs. *Id.*

171. In follow up correspondence Ventex’s counsel wrote:

As noted in my email yesterday, we have produced all non-privileged responsive documents that Ventex identified in searching documents in its possession, custody, or control. We believe those searches were comprehensive and reasonable.

Nonetheless, in light of the documents produced by Seirus last Friday, we visited Ventex’s office earlier today, during business hours in Korea. We met directly with the company’s CEO, Mr. Go, as well as Mr. Park, to confirm whether any responsive information was overlooked. Ventex undertook supplemental search efforts, with our assistance. Yet, Ventex has not been able to locate any copies of the exclusivity agreement produced by Seirus. Nor has the company been able to locate any additional responsive documents in its possession, custody, or control, based on these supplemental search efforts.

Ex. 8.

172. The Exclusive Manufacturing Agreement was executed by Ventex’s CEO and designated Park as the notice party. Ex. 6, p. 4.

173. Seirus also produced an email from Park referencing the written agreement, in which Park cited specific paragraph numbers within the agreement while seeking payment from Seirus. *Id.*

174. Ventex blamed Park's memory and claimed that these documents had been innocently deleted by Park, and in an act of disloyalty by former employee Joori Hwang. *Id.* at 4, 8. Ventex insisted that Ms. Hwang engaged in "misconduct" and "deleted her computer" "despite instructions to the contrary." *Id.* at 8.

175. This was not true either, as Ventex was aware of its responsibility to preserve evidence by May of 2017. *Id.* at 4-5.

176. Ventex was also under a duty to preserve evidence beginning in October 2016, when it engaged Covington to file the IPRs. *Id.* at 7.

177. After May 2017, Ms. Hwang and her supervisor, Seok Jeun Jung, left Ventex, and upon their departure, Ventex deleted their email accounts, and did so knowing that Ms. Hwang managed the Seirus account and negotiated the funding arrangement, and that both she and Mr. Jung were involved in the decision to file the IPRs. *Id.* at 4-5. Ventex also deleted the email account of Kyung Joong Na, another relevant former Ventex employee. *Id.* at 8.

178. Park, during a deposition that took place in Oregon on December 11-12, 2018, admitted that he himself deleted substantial relevant emails, and that no efforts were made to retrieve any of these deleted emails or files. *Id.* at 8.

179. Ventex destroyed all of its copies of the Exclusive Manufacturing Agreement itself, as well as all emails, notes, drafts, and other documents concerning the agreement from before it was signed.

180. During Mr. Park's December 11-12, 2018 deposition in Oregon, Mr. Park insisted, notwithstanding abundant evidence to the contrary, that he never had knowledge that there was a written agreement, even when he emailed Seirus about it. Ex. 9 at 3-4. Specifically, Mr. Park emailed Seirus seeking payment pursuant to the written agreement and *cited specific paragraph numbers within it*. Ex. 6, p. 4. The written Heatwave Exclusive Manufacturing Agreement in fact *designated Mr. Park as the notice party* for Ventex.

181. Ventex stated that Mr. Park had "memory lapses," such that he had not remembered the written agreement at his first deposition. Ex. 9, p. 3. This confirms that Mr. Park once knew about the written agreement. However, at his Oregon deposition on December 11-12, he again testified that he never knew about the written agreement. *Id.* at 4.

182. Therefore, Mr. Park's testimony during the December 2018 deposition in Oregon relating to the Exclusive Manufacturing Agreement was false. *Id.*

183. Thus, Defendants have resorted to perjury and spoliation of evidence as part of the efforts to maintain secrecy and to perpetuate their ongoing fraud.

XII. THE SCHEME CONTINUES

184. During the course of these IPRs, *Ventex* sought to settle *Seirus's* case for it, thereby reaffirming that Seirus was a real party-in-interest in the IPRs.

185. On December 22, 2017, Ventex and Columbia spoke at Ventex's invitation to discuss a settlement proposal. Ex. 10, p. 4. One of *Ventex's* material settlement terms required Columbia to drop its lawsuit against *Seirus*, which had by then been tried to a jury and was pending appeal. *Id.*

186. This communication is further evidence that Seirus is a real party-in-interest to the Ventex IPRs. The parties did not settle.

187. On September 27, 2018 the PTAB granted a Columbia motion for additional discovery in the Ventex IPRs to allow Columbia to explore the relationship between Seirus and Ventex.

188. The next business day (Korea time), Park emailed Murphy, “Please call me back as soon as possible.” Ex. 4, pp. 6-7.

189. In response, Murphy offered to meet in person on October 23, 2018. *Id.* at 7.

190. Murphy and Park were careful to avoid documenting any substance in email. *Id.*

191. Ventex has stated that they met to discuss the so-called “License Fee.” *Id.*

192. Upon information and belief, Park and Murphy actually discussed the IPR Funding Scheme, which by that point had been disclosed through the IPR proceedings.

193. As part of the October 4, 2018 document production, Ventex produced a privilege log showing numerous email communications between counsel for Ventex and Seirus that were withheld on the basis of a “common interest privilege.” Ex. 10, p. 5.

194. Further, in its response to an interrogatory from Columbia, Ventex identified several non-written communications with Seirus concerning the Ventex IPRs that were withheld on the basis of the same “common interest privilege.” *Id.*

195. By law, the common interest privilege may only be invoked when the parties make the communication *in pursuit of a joint strategy in accordance with some form of agreement*—whether written or unwritten. The common interest privilege applies only where the specific communications at issue were designed to facilitate *a common legal interest; a business or commercial interest will not suffice*. The common interest privilege arises out of the need for a common legal defense, as opposed merely to a common problem.

196. Ventex hid its communications with Seirus about the Ventex IPRs behind a “common interest privilege” that could only have been invoked if Seirus was a real party-in-interest.

XIII. FOLLOWING DISCLOSURE OF THE IPR FUNDING SCHEME, THE PTAB DISMISSED THE IPRS

197. After Columbia provided the PTAB with the allegations and evidence described herein, on January 24, 2019, the PTAB issued a sealed order Dismissing the Petition, Vacating Institution of *Inter Partes* Review, and Terminating *Inter Partes* Reviews of the ’119 and ’270 Patents. When the PTAB releases a public version of its Order, Columbia will supplement this Complaint to include specific findings made by the PTAB in its decision to terminate the IPRs.

XIV. THE DAMAGE CAUSED BY DEFENDANTS’ UNLAWFUL CONDUCT

198. Due to Ventex’s continued litigation of the fraudulently-filed Ventex IPRs, Columbia has spent significant funds to file responsive papers, including its Patent Owner Response and numerous briefs and exhibits relating to motions for additional discovery regarding the relationship between Ventex and Seirus; to take and defend expert and corporate witness depositions; and to prepare for and appear at numerous in-person and telephonic hearings with the PTAB Judges, including oral argument on the merits of the Ventex IPRs; all of which include filing fees, litigation costs, and attorneys’ fees, even though the Ventex IPRs never should have been instituted.

199. To date, Columbia has spent over \$700,000 defending the fraudulently-filed IPRs.

FIRST CLAIM FOR RELIEF

(Federal RICO 18 U.S.C. § 1964(c))

200. Plaintiff incorporates by reference and realleges paragraphs 1 through 199 set forth above.

201. Plaintiff alleges that Defendants’ conduct, and the conduct of each Defendant named herein, constitutes racketeering as set forth in 18 U.S.C. § 1964(c). Specifically, Congress has defined “racketeering” to include wire fraud, or committing fraud by means of electronic transmissions over wire. The Defendants here engaged in multiple instances of wire fraud, including twice submitting fraudulent IPR petitions to the PTAB via wire, in which they falsely claimed that Ventex was the only real party in interest in these IPRs.

202. As detailed below, Columbia alleges three different causes of action for federal RICO violations. In summary, Section 1962(c) provides relief against parties who engage in a pattern of racketeering activity, Section 1962(a) provides relief against parties who use income generated through a pattern of racketeering activity, and Section 1962(d) provides relief against those who conspire to violate the racketeering laws. Defendants are liable under each of these three sections of the statute.

203. 18 U.S.C. § 1964(c) allows “any person injured in his business or property by reason of a violation of section 1962 of this chapter” to “sue therefor in any appropriate United States district court and shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney’s fee”

Count 1: Violation of 18 U.S.C. § 1962(c)

204. Plaintiff incorporates by reference and realleges paragraphs 1 through 202 set forth above.

205. 18 U.S.C. § 1962(c) makes it “unlawful for any person employed by or associated with any enterprise engaged in, or the activities of which affect, interstate or foreign commerce, to conduct or participate, directly or indirectly, in the conduct of such enterprise’s affairs through a pattern of racketeering activity . . . ” 18 U.S.C. § 1962(c).

206. Each Defendant, at all relevant times, is and has been a “person” within the meaning of 18 U.S.C. § 1961(3) because each Defendant is capable of holding, and does hold, “a legal or beneficial interest in property.”

207. Defendants’ activities include at least two acts of racketeering activity since 2016. Accordingly, Defendants’ conduct constitutes a “pattern” of racketeering activity. 18 U.S.C. § 1961(5).

208. One such act took place on January 11, 2017, when Ventex, in furtherance of the activities, purpose and scheme of the Seirus Enterprise, falsely and fraudulently filed the ’119 patent IPR petition using interstate wires.

209. A second such act took place on January 27, 2017, when Ventex, in furtherance of the activities, purpose and scheme of the Seirus Enterprise, falsely and fraudulently filed the ’270 patent IPR petition using interstate wires.

210. Other such acts are described further below. All of these acts were continuous over the life of the IPRs.

211. At all times relevant hereto, beginning on or around October 21, 2016 and continuing through the termination of the IPRs, each Defendant conducted and participated in the affairs of an enterprise through a pattern of racketeering activity, in violation of 18 U.S.C. § 1962(c).

212. On or around October 21, 2016, Defendants formed an association-in-fact Enterprise, described herein as the Seirus Enterprise, within the meaning of 18 U.S.C. § 1961(4).

213. The Seirus Enterprise consists of a group of “persons” associated together for the common purpose of intentionally and willfully defrauding Plaintiff Columbia and the PTAB by

creating and conducting a scheme to fraudulently file and litigate IPR Nos. 2017-00651 and 2017-00789.

214. The Seirus Enterprise is an ongoing organization that functions as a continuing unit. The Seirus Enterprise was created and used as a tool to effectuate Defendants' pattern of racketeering activity.

215. All Defendants agreed to and did conduct and participate in the conduct of the Seirus Enterprise's affairs through a pattern of racketeering activity including wire fraud as defined by 18 U.S.C. § 1343, and for the unlawful purpose of intentionally defrauding Plaintiff.

216. The wire fraud committed by Defendants is based on a scheme developed and carried out by the Seirus Enterprise wherein Defendant Ventex fraudulently electronically filed two petitions for IPR at the PTAB (using interstate wires) and then continued to litigate same, while intentionally omitting the real party-in-interest, Defendant Seirus, who funded the filing and litigation of the Ventex IPRs.

217. The PTAB and Columbia were deceived by this omission and the fraudulent communications to the PTAB surrounding the filing of the Ventex IPRs on January 11 and 27, 2017.

218. Defendant Ventex, as Petitioner in the Ventex IPRs, had a duty to disclose the real party-in-interest to Plaintiff and to the PTAB upon filing the Ventex IPRs on January 11 and 27, 2017.

219. Defendant Ventex's failure to disclose the real party-in-interest to Plaintiff and to the PTAB was done intentionally and with full knowledge of all relevant facts.

220. Defendant Ventex's failure to disclose the real party-in-interest to Plaintiff and to the PTAB upon filing the Ventex IPRs was fraudulent.

221. Defendant Seirus's filing of its motion to stay the co-pending Seirus Oregon Action at the direction of its officers—Defendants M. Carey, W. Carey and Murphy—on August 1, 2017 was fraudulent.

222. Defendant Ventex's continued litigation of the Ventex IPRs without disclosing the real party-in-interest to Plaintiff and the PTAB was fraudulent.

223. Defendant Ventex's filing of a motion to stay the co-pending Ventex Oregon Action on November 6, 2017 was fraudulent.

224. Defendants used the wires for the transmission, delivery, or shipment of the following by the Defendants or third parties, all of which are related to the IPR Funding Scheme, and they were foreseeably caused to be sent as a result of Defendants' illegal IPR Funding Scheme:

- Wires to the U.S. PTAB used to fraudulently file papers in the Ventex IPRs on, e.g., January 11, 2017 and January 27, 2017, and continuing until termination of the IPRs;
- Wires to the U.S. District Court for the District of Oregon used to fraudulently file papers in the Seirus Oregon Action and the Ventex Oregon Action on, e.g., February 7, 2017, August 1, 2017 and November 6, 2017;
- Wires between Defendants;
- Email and telephone communications between Defendants; and
- Payments between Ventex and Seirus in, e.g., January 2017, and continuing through the term of the Exclusive Manufacturing Agreement.

225. Defendants used the Internet and other electronic facilities to carry out the IPR Funding Scheme and to conceal their ongoing fraudulent activities.

226. At all times discussed herein, Defendants have been involved in a plan to scheme or defraud; have had the intent to defraud and have willfully participated in the scheme to defraud with actual knowledge of its fraudulent nature and with specific intent to defraud; and

could have reasonably foreseen that interstate wires would be used; and actually used interstate wires to further Defendants' scheme.

227. The Seirus Enterprise engaged in and affected interstate commerce by way of said wire fraud.

228. The wire transmissions described herein were made in furtherance of Defendants' scheme and common course of conduct.

229. To achieve their common goals, Defendants knowingly and willfully concealed from the public, the PTAB, this Court and Plaintiff the unlawfulness of Seirus's conduct, which was committed at the instruction of, and through the directions of, M. Carey, W. Carey and Murphy.

230. To achieve their common goals, Defendants knowingly and willfully concealed from the public, the PTAB, this Court and Plaintiff the unlawfulness of Ventex's conduct, which was committed at the instruction of, and through the directions of, Go and Park.

231. As a direct and proximate consequence of the conduct of Defendants and each of them as alleged herein, Plaintiff has been injured in its business and property, causing Plaintiff to suffer monetary damages in an amount not less than \$700,000, said damages to be proven at the time of trial.

232. Because of Defendants' violations of 18 U.S.C. § 1962(c), Defendants are liable to Plaintiff for three times the damages Plaintiff has sustained, plus the cost of this suit, including reasonable attorneys' fees.

Count 2: Violation of 18 U.S.C. § 1962(a)

233. Plaintiff incorporates by reference and realleges paragraphs 1 through 232 set forth above.

234. 18 U.S.C. § 1962(a) makes it “unlawful for any person who has received any income derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, directly or indirectly, any part of such income, or the proceeds of such income, in acquisition of any interest in, or the establishment or operation of, any enterprise which is engaged in, or the activities of which affect, interstate or foreign commerce.” 18 U.S.C. § 1962(a).

235. As alleged in paragraph 206, each Defendant, at all relevant times, is and has been a “person” within the meaning of 18 U.S.C. § 1961(3).

236. As alleged in the preceding section, Defendants’ conduct constitutes a “pattern” of racketeering activity. 18 U.S.C. § 1961(5).

237. At all times relevant hereto, beginning on or around October 21, 2016 and continuing at least through the termination of the IPRs, Defendants received income derived from a pattern of racketeering activity to use or invest a part of such income or the proceeds of such income in the establishment and operation of an enterprise that is engaged in, or the activities of which affect, interstate or foreign commerce, in violation of 18 U.S.C. § 1962(a).

238. As alleged in the preceding section, on or around October 21, 2016, Defendants formed the Seirus Enterprise to effectuate Defendants’ pattern of racketeering activity.

239. All Defendants agreed to and did use income received directly from a pattern of racketeering activity to control, establish and operate the Seirus Enterprise, which was engaged in and affected interstate commerce, including wire fraud as defined by 18 U.S.C. § 1343, and for the unlawful purpose of intentionally defrauding Plaintiff.

240. The wire fraud committed by Defendants is set forth in the preceding section and is incorporated by reference herein.

241. As a direct and proximate consequence of the conduct of Defendants and each of them as alleged herein, Plaintiff has been injured in its business and property, causing Plaintiff to suffer monetary damages in an amount not less than \$700,000, said damages to be proven at the time of trial.

242. Because of Defendants' violations of 18 U.S.C. § 1962(a), Defendants are liable to Plaintiff for three times the damages Plaintiff has sustained, plus the cost of this suit, including reasonable attorneys' fees.

Count 3: Violation of 18 U.S.C. § 1962(d)

243. Plaintiff incorporates by reference and realleges paragraphs 1 through 242 set forth above.

244. 18 U.S.C. § 1962(d) makes it "unlawful for any person to conspire to violate any of the provisions of subsection (a), (b) or (c) of this section."

245. As alleged in the preceding sections, each Defendant, at all relevant times, is and has been a "person" within the meaning of 18 U.S.C. § 1961(3).

246. At all relevant times, beginning in or around October 21, 2016 and continuing at least through the termination of the IPRs, the Defendants and each Defendant agreed to and did conspire to violate 18 U.S.C. §§ 1962 (a) and (c), as alleged above and incorporated herein, in violation of 18 U.S.C. § 1962(d). The object of this conspiracy has been and is to conduct or participate in, directly or indirectly, the conduct of the affairs of the enterprise described above; and to receive income derived from a pattern of racketeering activity and to use such income or the proceeds of such income in the establishment and operation of that enterprise.

247. Defendants have knowingly, willfully and intentionally conspired and agreed to conduct and participate in the conduct of the affairs of the enterprise described previously through a pattern of racketeering activity (wire fraud).

248. Defendants have knowingly, willfully and intentionally conspired and agreed to receive income derived from a pattern of racketeering activity (wire fraud) and to use such income or the proceeds of such income in the establishment and operation of the enterprise described previously.

249. Defendants knew that their actions as alleged above were part of a pattern of racketeering activity and agreed to the commission of those acts to further the conspiratorial scheme described above.

250. Defendants' conduct constitutes a conspiracy to violate 18 U.S.C. §§ 1962(c) and (a), in violation of 18 U.S.C. § 1962(d).

251. As a direct and proximate consequence of the Defendants' conspiracy, the overt acts taken in furtherance of that conspiracy, and violations of 18 U.S.C. § 1962(d), Plaintiff has been injured in its business and property, causing Plaintiff to suffer monetary damages in an amount not less than \$700,000, said damages to be proven at the time of trial.

252. Because of Defendants' violations of 18 U.S.C. § 1962(d), Defendants are liable to Plaintiff for three times the damages Plaintiff has sustained, plus the cost of this suit, including reasonable attorneys' fees.

SECOND CLAIM FOR RELIEF

(Oregon RICO ORS 166.725(7)(a)(B))

253. Plaintiff incorporates by reference and realleges paragraphs 1 through 252 set forth above.

254. Plaintiff alleges that Defendants' conduct, and the conduct of each Defendant named herein, constitutes racketeering as set forth in ORS 166.725(7)(a)(B). Specifically, Oregon has defined "racketeering" to include such acts as perjury and false swearing. The Defendants here engaged in multiple instances of perjury and false swearing, including when Ventex and Park gave deposition and declaration testimony in which they falsely stated that no written agreement regarding the funding of the Ventex IPRs existed between Ventex and Seirus, when in fact one did. Defendants also engaged in perjury or false swearing when they served Columbia's Oregon attorneys with copies of the IPR Petitions that falsely stated that Ventex was the only real party in interest. Defendants also submitted statements to this Court in motions to stay or disrupt cases before this Court under the false pretense that the IPR Petitions were properly filed and truthful when they were not.

255. As detailed below, Columbia alleges three different causes of action for Oregon RICO violations. In summary, ORS 166.720(3) provides relief against parties who engage in a pattern of racketeering activity, ORS 166.720(1) provides relief against parties who use income generated through a pattern of racketeering activity, and ORS 166.720(4) provides relief against those who conspire to violate the racketeering laws. Defendants are liable under each of these three sections of the statute.

256. ORS 166.725(7)(a) allows "any person who is injured by reason of any violation of the provisions of ORS 166.720 (Racketeering activity unlawful) (1) to (4) shall have a cause of action for three-fold the actual damages sustained and, when appropriate, punitive damages."

Count 1: Violation of OR 166.720(3)

[Oregon Counterpart to 28 U.S.C. § 1962(c)]

257. Plaintiff incorporates by reference and realleges paragraphs 1 through 256 set forth above.

258. ORS 166.720(3) makes it “unlawful for any person employed by, or associated with, any enterprise to conduct or participate, directly or indirectly, in such enterprise through a pattern of racketeering activity” ORS 166.720(3).

259. Each Defendant, at all relevant times, is and has been a “person” within the meaning of ORS 166.715(5) because each Defendant is capable of holding, and does hold, “a legal or beneficial interest in real or personal property.”

260. At all times relevant hereto, beginning in or around October 21, 2016 and continuing at least through the termination of the IPRs, each Defendant conducted and participated in the affairs of an enterprise through a pattern of racketeering activity, in violation of ORS 166.720(3).

261. On or around October 21, 2016, Defendants formed an association-in-fact Enterprise, described herein as the Seirus Enterprise, within the meaning of ORS 166.715(2).

262. ORS 166.715(6) provides that the term “Racketeering activity” includes conduct of a person committed both before and after the person attains the age of 18 years, and means to commit, to attempt to commit, to conspire to commit, or to solicit, coerce or intimidate another person to commit, i.e., any conduct that constitutes a crime, as defined in ORS 161.515, which includes perjury as defined by ORS 162.065 and false swearing as defined by ORS 162.075. ORS 166.715(6)(a)(B).

263. Defendants' activities and conduct as alleged above constitute a "pattern" of racketeering because they include at least two incidents of racketeering activity since 2016 that have the same or similar intents, results, accomplices, victims or methods of commission or otherwise are interrelated by distinguishing characteristics, including a nexus to the same enterprise, and are not isolated incidents. ORS 166.715(4).

264. One such act took place on January 11, 2017, when Ventex, in furtherance of the activities, purpose and scheme of the Seirus Enterprise, falsely and fraudulently filed the '119 patent IPR petition under penalty of at least, e.g., perjury.

265. A second such act took place on January 27, 2017, when Ventex, in furtherance of the activities, purpose and scheme of the Seirus Enterprise, falsely and fraudulently filed the '270 patent IPR petition under penalty of at least, e.g., perjury.

266. Other such acts are described further herein.

267. The Seirus Enterprise consists of a group of "persons," which includes individuals, partnerships, corporations and other profit legal entities, associated together for the common purpose of intentionally and willfully defrauding Plaintiff Columbia and the PTAB by creating and conducting a scheme to fraudulently file and litigate IPR Nos. 2017-00651 and 2017-00789, with the express purpose of using those IPRs to stay a pending litigation in this Court against Defendant Seirus on the eve of trial.

268. The Seirus Enterprise is an ongoing organization that functions as a continuing unit. The Seirus Enterprise was created and used as a tool to effectuate Defendants' pattern of racketeering activity.

269. All Defendants agreed to and did conduct and participate in the conduct of the Seirus Enterprise's affairs through a pattern of racketeering activity, including perjury as defined

by ORS 162.065 and false swearing as defined by ORS 162.075, and for the unlawful purpose of intentionally defrauding Plaintiff, the PTAB and this Court.

270. Defendants' conduct in furtherance of the Seirus Enterprise is based on a scheme developed and carried out by the Seirus Enterprise wherein Defendant Ventex fraudulently filed two petitions for IPR at the PTAB, effected service of those petitions on Columbia in Oregon, and then continued to litigate same, while intentionally omitting the real party-in-interest, Defendant Seirus, who was funding the filing and litigation of the Ventex IPRs.

271. The PTAB and Plaintiff were deceived by this omission and the fraudulent communications to the PTAB surrounding the filing of the Ventex IPRs on January 11 and 27, 2017.

272. Defendant Ventex, as Petitioner in the Ventex IPRs, had a duty to disclose the real party-in-interest to Plaintiff and to the PTAB upon filing the Ventex IPRs on January 11 and 27, 2017 and upon service of the Ventex IPRs on Columbia's counsel in Oregon.

273. Defendant Ventex's failure to disclose the real party-in-interest to Plaintiff and to the PTAB was done intentionally and with full knowledge of all relevant facts.

274. Defendant Ventex's failure to disclose the real party-in-interest to Plaintiff and to the PTAB upon filing the Ventex IPRs, and upon serving the petitions on Columbia in Oregon, was fraudulent.

275. Defendant Seirus's filing of its motion to stay the co-pending Seirus Oregon Action at the direction of its officers—Defendants M. Carey, W. Carey and Murphy—on August 1, 2017 was fraudulent.

276. Defendant Ventex's continued litigation of the Ventex IPRs without disclosing the real party-in-interest to Plaintiff and the PTAB was fraudulent.

277. Defendant Ventex's filing of a motion to stay the co-pending Ventex Oregon Action on November 6, 2017 was fraudulent.

278. Defendants' conduct, in furtherance of the conspiracies and fraudulent purpose as alleged above, constitutes perjury as defined by ORS 162.065 because Defendants made false sworn statements or false unsworn declarations in regard to a material issue, knowing them to be false. Specifically, Defendant Ventex made a false sworn statement or false unsworn declaration in regard to a material issue, knowing it to be false, when it effected service of the fraudulent IPR petitions on Columbia in Oregon. Further, Defendant Ventex, through its corporate representative Defendant Park, made false sworn statements in regard to a material issue, knowing them to be false, when Defendant Park testified that the agreement between Ventex and Seirus regarding the IPR Funding Scheme was never agreed to in writing, when in fact it was executed in writing on October 21, 2016 and Park was included on emails concerning the executed agreement. These false sworn statements were transmitted to outside counsel for Plaintiff in Oregon. Defendant Park and Defendant Ventex, through its corporate representative Park, also made false sworn statements in regard to a material issue, knowing them to be false, regarding the existence of the written agreement between Ventex and Seirus during Park's personal and corporate depositions that took place in Oregon on December 11-12, 2018.

279. Defendants' conduct, in furtherance of the conspiracies and fraudulent purpose as alleged above, constitutes false swearing as defined by ORS 162.075 because Defendants made a false sworn statement or false unsworn declaration, knowing it to be false. Specifically, Defendant Ventex made a false sworn statement or false unsworn declaration in regard to a material issue, knowing it to be false, when it effected service of the fraudulent IPR petitions on Columbia in Oregon. Further, Defendant Ventex, through its corporate representative Defendant

Park, made false sworn statements, knowing them to be false, when Defendant Park testified that the agreement between Ventex and Seirus regarding the IPR Funding Scheme was never agreed to in writing, when in fact it was executed in writing on October 21, 2016. These false sworn statements were transmitted to outside counsel for Columbia in Oregon. Defendant Park and Defendant Ventex, through its corporate representative Park, also made false sworn statements, knowing them to be false, regarding the existence of the written agreement between Ventex and Seirus during Park's depositions that took place in Oregon on December 11-12, 2018.

280. To achieve their common goals, Defendants knowingly and willfully concealed from the public, the PTAB, this Court and Plaintiff the unlawfulness of Seirus's conduct, which was committed at the instruction of, and through the directions of, M. Carey, W. Carey and Murphy.

281. To achieve their common goals, Defendants knowingly and willfully concealed from the public, the PTAB, this Court and Plaintiff the unlawfulness of Ventex's conduct, which was committed at the instruction of, and through the directions of, Go and Park.

282. As a direct consequence of Defendants' conduct as alleged herein, Plaintiff has been injured in its business and property, causing Plaintiff to suffer monetary damages in an amount not less than \$700,000, said damages to be proven at the time of trial.

283. Because of Defendants' violations of ORS 166.720(3), Defendants are liable to Plaintiff for three times the damages Plaintiff has sustained, plus the cost of this suit, including reasonable attorneys' fees. ORS 166.725(7).

284. For the reasons stated in the preceding section, Plaintiff is entitled to punitive damages from the Defendants, and each of them. ORS 166.725(7).

Count 2: Violation of OR 166.720(1)

[Oregon Counterpart to 28 U.S.C. § 1962(a)]

285. Plaintiff incorporates by reference and realleges paragraphs 1 through 284 set forth above.

286. ORS 166.720(1) makes it “unlawful for any person who has knowingly received any proceeds derived, directly or indirectly, from a pattern of racketeering activity . . . to use or invest, whether directly or indirectly, any part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest or equity in, real property or in the establishment or operation of any enterprise.” ORS 166.720(1).

287. As alleged in the preceding section, each Defendant, at all relevant times, is and has been a “person” within the meaning of ORS 166.715(5).

288. At all times relevant hereto, beginning on or around October 21, 2016 and continuing until the termination of the IPRs, Defendants received proceeds derived from a pattern of racketeering activity to use or invest a part of such proceeds, or the proceeds derived from the investment or use thereof, in the acquisition of any title to, or any right, interest or equity in, real property or in the establishment or operation of any enterprise, in violation of ORS 166.720(1).

289. As alleged in the preceding section, Defendants’ activities, through the Seirus Enterprise, constitute a pattern of racketeering activity, which includes perjury and false swearing as defined by Oregon law.

290. All Defendants agreed to and did receive proceeds derived from a pattern of racketeering activity, including perjury as defined by ORS 162.065 and false swearing as defined by ORS 162.075, and used such proceeds in the establishment and operation of the Seirus

Enterprise's affairs, and for the unlawful purpose of intentionally defrauding Plaintiff, the PTAB and this Court.

291. Defendants' conduct, in furtherance of the conspiracies and fraudulent purpose as alleged above, constitutes perjury as defined by ORS 162.065, as alleged in paragraph 278.

292. Defendants' conduct, in furtherance of the conspiracies and fraudulent purpose as alleged above, constitutes false swearing as defined by ORS 162.075, as alleged in paragraph 279 .

293. To achieve their common goals, Defendants knowingly and willfully concealed from the public, the PTAB, this Court and Plaintiff the unlawfulness of Seirus's conduct, which was committed at the instruction of, and through the directions of, M. Carey, W. Carey and Murphy.

294. To achieve their common goals, Defendants knowingly and willfully concealed from the public, the PTAB, this Court and Plaintiff the unlawfulness of Ventex's conduct, which was committed at the instruction of, and through the directions of, Go and Park.

295. As a direct and proximate consequence of the conduct of Defendants and each of them as alleged herein, Plaintiff has been injured in its business and property, causing Plaintiff to suffer monetary damages in an amount not less than \$700,000, said damages to be proven at the time of trial.

296. Because of Defendants' violations of ORS 166.720(3), Defendants are liable to Plaintiff for three times the damages Plaintiff has sustained, plus the cost of this suit, including reasonable attorneys' fees. ORS 166.725(7).

297. For the reasons stated in the preceding section, Plaintiff is entitled to punitive damages from the Defendants, and each of them. ORS 166.725(7).

Count 3: Violation of OR 166.720(4)

[Oregon Counterpart to 28 U.S.C. § 1962(d)]

298. Plaintiff incorporates by reference and realleges paragraphs 1 through 297 set forth above.

299. ORS 166.720(4) makes it “unlawful for any person to conspire or endeavor to violate any of the provisions of subsections (1), (2) or (3) of this section.”

300. At all relevant times, each Defendant is and has been a “person” within the meaning of ORS 166.715(5).

301. At all relevant times, beginning in or around October 21, 2016 and continuing at least through the termination of the IPRs, the Defendants and each Defendant agreed to and did conspire to violate ORS 166.720(1) and (3), as alleged above and incorporated herein, in violation of ORS 166.720(4). The object of this conspiracy has been and is to conduct or participate in, directly or indirectly, the conduct of the affairs of the enterprise described previously; and to receive proceeds derived from a pattern of racketeering activity and to use such proceeds, or the proceeds derived from the use thereof, in the establishment and operation of the enterprise described previously.

302. Defendants have knowingly, willfully and intentionally conspired and agreed to conduct and participate in the conduct of the affairs of the enterprise described previously through a pattern of racketeering activity (perjury and false swearing).

303. Defendants have knowingly, willfully and intentionally conspired and agreed to receive proceeds derived from a pattern of racketeering activity (perjury and false swearing) and to use such proceeds in the establishment and operation of the enterprise described above.

304. Defendants knew that their actions as alleged above were part of a pattern of racketeering activity and agreed to the commission of those acts to further the conspiratorial scheme described above.

305. Defendants' conduct constitutes a conspiracy to violate ORS 166.720(1) and (3), in violation of ORS 166.720(4).

306. As a direct and proximate consequence of the Defendants' conspiracy, the overt acts taken in furtherance of that conspiracy, and violations of ORS 166.720(4), Plaintiff has been injured in its business and property, causing Plaintiff to suffer monetary damages in an amount not less than \$700,000, said damages to be proven at the time of trial.

307. Because of Defendants' violations of ORS 166.720(4), Defendants are liable to Plaintiff for three times the damages Plaintiff has sustained, plus the cost of this suit, including reasonable attorneys' fees. ORS 166.725(7).

308. For the reasons stated in the preceding section, Plaintiff is entitled to punitive damages from the Defendants, and each of them. ORS 166.725(7).

THIRD CLAIM FOR RELIEF

(Fraud - Oregon)

309. Plaintiff incorporates by reference and realleges paragraphs 1 through 308 set forth above.

310. On January 11 and 27, 2017, at the time of filing the Ventex IPRs, and when Ventex served Columbia with the petitions for IPR in Oregon, Defendants committed fraud under Oregon law when they intentionally and falsely represented to Columbia and the PTAB that Ventex was the only real party-in-interest in the Ventex IPRs; and continued to make this

representation by failing to file updated mandatory notices in the Ventex IPRs that identified Seirus as the real party-in-interest.

311. From 2017 through the present, Defendants have intentionally and falsely represented on invoices and purchase orders for Ventex's HeatWave fabric that a "license fee" was being paid by Seirus to Ventex.

312. Rather than paying a "license fee," Seirus was actually funding the Ventex IPRs through payments masked as "license fees" or "surcharges," and those payments were made intentionally and with the purpose of defrauding the PTAB and Columbia.

313. On October 30, 2018 and November 9, 2018, Defendant Ventex, through its corporate representative Defendant Park, intentionally and falsely represented, via sworn statements in Defendant Park's declaration and deposition testimony, respectively, that the agreement between Ventex and Seirus regarding the IPR Funding Scheme was never agreed to in writing, when in fact it was executed in writing on October 21, 2016. These false sworn statements, which constitute perjury under Oregon law, were transmitted to outside counsel for Plaintiff located in Oregon.

314. On December 11-12, 2018, Defendant Ventex, through its corporate representative Defendant Park, and Defendant Park in his personal capacity, intentionally and falsely represented, via sworn statements during Mr. Park's depositions in Oregon, that, notwithstanding abundant evidence to the contrary, he never had knowledge that there was a written agreement, even when he emailed Seirus about it.

315. These false representations are material because as of April 2015 Seirus was time-barred from filing any IPRs on the '119 and '270 patents. Had Seirus been identified as a real party-in-interest, the PTAB would have been statutorily prohibited from instituting the Ventex

IPRs. They are further material because Defendants have fraudulently used the Ventex IPRs to move for stays of the co-pending Seirus Oregon Action and Ventex Oregon Action regarding the same patents. They are further material because the October 21, 2016 written agreement is in fact the basis of the IPR Funding Scheme.

316. Specifically, on February 7, 2017, Defendant Seirus knowingly concealed and failed to make known material facts when it filed a notice of third-party petitions for *inter partes* review in the Seirus Oregon Action in this Court. For example, in notifying the Court, Seirus failed to apprise the Court that the Ventex IPRs had been filed and were being litigated fraudulently. Seirus knew it was a real party-in-interest to the Ventex IPRs and thus would be statutorily barred from filing any petitions for IPR on the '119 and '270 patents.

317. Further, on February 8, 2017 and August 1, 2017, Defendant Seirus knowingly concealed and failed to make known material facts when it filed motions to stay the Seirus Oregon Action based on the Ventex IPRs. For example, in filing those motions, Seirus failed to apprise the Court that the Ventex IPRs had been filed and were being litigated fraudulently. Seirus knew it was a real party-in-interest to the Ventex IPRs and thus would be statutorily barred from filing any petitions for IPR on the '119 and '270 patents.

318. Further, on September 1, 2017, Defendant Seirus knowingly concealed and failed to make known material facts when it orally moved this Court in the Seirus Oregon Action to stay the case pending the Final Written Decision in the Ventex IPRs. For example, in making this oral motion, Seirus failed to apprise the Court that the Ventex IPRs had been filed and were being litigated fraudulently. Seirus knew it was a real party-in-interest to the Ventex IPRs and thus would be statutorily barred from filing any petitions for IPR on the '119 and '270 patents.

319. Further, on November 6, 2017, Defendant Ventex knowingly concealed and failed to make known material facts when it filed a motion to stay the Ventex Oregon Action in this Court based on the Ventex IPRs. For example, in filing this motion, Ventex failed to apprise the Court that the Ventex IPRs had been filed and were being litigated fraudulently. Ventex knew that Seirus was a real party-in-interest to the Ventex IPRs and thus would be statutorily barred from filing any petitions for IPR on the '119 and '270 patents.

320. At all relevant times Defendants had knowledge of the falsity of their representation that Ventex is the only real party-in-interest to the Ventex IPRs.

321. At all relevant times Defendants had knowledge that the “license fees” and “surcharges” included on purchase orders and invoices between Seirus and Ventex were a sham.

322. At all relevant times Defendants had knowledge of the falsity of their representation that the agreement relating to the IPR Funding Scheme was not reduced to writing.

323. Defendants intended to use their false representations and their misrepresentations and concealments to delay trials in the co-pending Seirus Oregon Action and Ventex Oregon Action and did in fact use them for that purpose.

324. Columbia did not know at the time the Ventex IPRs were filed that Ventex and Seirus entered into a written agreement on October 21, 2016 regarding the IPR Funding Scheme, nor did Columbia know of the IPR Funding Scheme.

325. Columbia did not know at the time the Ventex IPRs were filed that the “license fees” and “surcharges” were being paid to Ventex by Seirus as a sham arrangement to pay for the IPRs.

326. Columbia was forced to respond to Seirus's false representations, misrepresentations, and omissions to this Court in the Seirus Oregon Action.

327. Columbia was forced to respond to Seirus's false representations, misrepresentations, and omissions to this Court in the Seirus Oregon Action to the extent of participating in and defending against the motion to dismiss.

328. The Court relied upon Ventex's false representations, misrepresentations, and omissions to this Court, and the Court stayed the Ventex Oregon Action as a result.

329. Columbia had a right to expect full and fair communications from Defendants regarding the real party-in-interest to the Ventex IPRs and had a right to rely upon same, especially because Ventex was statutorily required to identify any and all real parties-in-interest to the Ventex IPRs and was required by the PTAB's discovery rules to disclose, e.g., the October 21, 2016 written agreement and documents relating to same.

330. Defendants, and each of them, also conspired to commit the frauds alleged herein, in that all Defendants conspired to accomplish the IPR Funding Scheme and had a meeting of the minds to accomplish that goal through one or more unlawful acts of fraud, as alleged herein, and Columbia suffered harm as a result of Defendants' conduct and conspiracy.

331. As a direct and proximate consequence of the conduct of Defendants, and each of them as alleged herein, Plaintiff has been injured in its business and property, causing Plaintiff to suffer monetary damages in an amount not less than \$700,000, said damages to be proven at the time of trial.

332. Because of Defendants' frauds as described herein, Defendants are liable to Plaintiff for costs and disbursements, including enhanced prevailing party fees pursuant to ORS 20.190(3) and reasonable attorneys' fees.

333. Defendants' conduct as alleged above was done in furtherance of their own private interests, and was willful, malicious, wanton, and oppressive, and done with conscious and callous indifference to the consequences and with specific intent to harm. Accordingly, Columbia is entitled to an award of punitive damages from Defendants and each of them in an amount to be proven at trial and sufficient to punish, penalize and deter Defendants from engaging in such conduct in the future.

FOURTH CLAIM FOR RELIEF

(Actual Fraud – Virginia)

334. Plaintiff incorporates by reference and realleges paragraphs 1 through 333 set forth above.

335. On January 11 and 27, 2017, at the time of filing the Ventex IPRs, Defendants committed actual fraud under Virginia law when they intentionally and falsely represented to Columbia and the PTAB that Ventex was the only real party-in-interest in the Ventex IPRs; and continued to make this representation by failing to file updated mandatory notices in the Ventex IPRs that identified Seirus as the real party-in-interest.

336. From 2017 through the present, Defendants have intentionally and falsely represented on invoices and purchase orders for Ventex's HeatWave fabric that a "license fee" was being paid by Seirus to Ventex, even though no license agreement between Seirus and Ventex existed.

337. Rather than paying a "license fee," Seirus was actually funding the Ventex IPRs through payments masked as "license fees" or "surcharges"; and those payments were made intentionally and with the purpose of defrauding the PTAB and Columbia.

338. On October 30, 2018 and November 9, 2018, Defendant Ventex, through its corporate representative Defendant Park, intentionally and falsely represented, via sworn statements in Defendant Park's declaration and deposition testimony, respectively, that the agreement between Ventex and Seirus regarding the IPR Funding Scheme was never agreed to in writing, when in fact it was executed in writing on October 21, 2016. This testimony was provided in conjunction with the IPRs that were being litigated before a tribunal based in Virginia.

339. On December 11-12, 2018, Defendant Ventex, through its corporate representative Defendant Park, and Defendant Park in his personal capacity, intentionally and falsely represented, via sworn statements during Mr. Park's depositions in Oregon, that, notwithstanding abundant evidence to the contrary, he never had knowledge that there was a written agreement, even when he emailed Seirus about it. This testimony was provided in conjunction with the IPRs that were being litigated before a tribunal based in Virginia.

340. These false representations are material because as of April 2015 Seirus was time-barred from filing any IPRs on the '119 and '270 patents. Had Seirus been identified as a real party-in-interest, the PTAB would have been statutorily prohibited from instituting the Ventex IPRs. They are further material because the October 21, 2016 written agreement is in fact the basis of the IPR Funding Scheme.

341. At all relevant times Defendants had knowledge of the falsity of their representation that Ventex is the only real party-in-interest to the Ventex IPRs.

342. At all relevant times Defendants had knowledge of the falsity of their representation that the "license fees" and "surcharges" included on purchase orders and invoices between Seirus and Ventex were a sham.

343. At all relevant times Defendants had knowledge of the falsity of their representation that the agreement relating to the IPR Funding Scheme was not reduced to writing.

344. Columbia did not know at the time the Ventex IPRs were filed that Ventex and Seirus entered into a written agreement on October 21, 2016 regarding the IPR Funding Scheme, nor did Columbia know of the IPR Funding Scheme.

345. Columbia did not know at the time the Ventex IPRs were filed that the “license fees” and “surcharges” were being paid to Ventex by Seirus as a sham arrangement to pay for the IPRs.

346. Columbia was forced to respond to the false representations Ventex made to Columbia and the PTAB to the extent of participating in and defending against the fraudulently-filed IPRs.

347. Columbia had a right to expect full and fair communications from Defendants regarding the real party-in-interest to the Ventex IPRs and had a right to rely upon same, especially because Ventex was statutorily required to identify any and all real parties-in-interest to the Ventex IPRs and was required by the PTAB’s discovery rules to disclose, e.g., the October 21, 2016 written agreement and documents relating to same.

348. As a direct and proximate consequence of the conduct of Defendants, and each of them as alleged herein, Plaintiff has been injured in its business and property, causing Plaintiff to suffer monetary damages in an amount not less than \$700,000, said damages to be proven at the time of trial.

349. Because of Defendants’ frauds as described herein, Defendants are liable to Plaintiff for costs and disbursements and reasonable attorneys’ fees.

350. Defendants' conduct as alleged above was done in furtherance of their own private interests, and was willful, malicious, wanton, and oppressive, and done with conscious and callous indifference to the consequences and with specific intent to harm. Accordingly, Columbia is entitled to an award of punitive damages from Defendants and each of them in an amount to be proven at trial and sufficient to punish, penalize and deter Defendants from engaging in such conduct in the future.

FIFTH CLAIM FOR RELIEF

(Civil Conspiracy to Commit Fraud – Virginia (VA Code § 18.2-499))

351. Plaintiff incorporates by reference and realleges paragraphs 1 through 350 set forth above.

352. VA Code § 18.2-499 makes it unlawful for “[a]ny two or more persons who combine, associate, agree, mutually undertake or concert together for the purpose of (i) willfully and maliciously injuring another in his reputation, trade, business or profession by any means whatever or (ii) willfully and maliciously compelling another to do or perform any act against his will, or preventing or hindering another from doing or performing any lawful act.”

353. At all relevant times, the Defendants agreed to and did conspire to willfully and maliciously injure Plaintiff in its reputation, trade, business or profession through the fraud committed by the Seirus Enterprise as described below.

354. Defendants, through the Seirus Enterprise, have knowingly, willfully and intentionally conspired and agreed to conduct and participate in the conduct of the affairs of the Seirus Enterprise as alleged in the preceding section.

355. Defendants, and each of them, also conspired to commit the frauds alleged herein, in that all Defendants conspired to accomplish the IPR Funding Scheme and had a meeting of the

minds to accomplish that goal through one or more unlawful acts of fraud, as alleged herein, and Columbia suffered harm as a result of Defendants' conduct and conspiracy.

356. As a direct and proximate consequence of the Defendants' conspiracy, Plaintiff has been injured in its business and property, causing Plaintiff to suffer monetary damages in an amount not less than \$700,000, said damages to be proven at the time of trial.

357. Because of Defendants' violations of VA Code § 18.2-499, Defendants are liable to Plaintiff for three times the damages Plaintiff has sustained, plus the cost of this suit, including reasonable attorneys' fees and any injunction the court deems reasonable. VA Code § 18.2-500.

358. Defendants' conduct as alleged in paragraphs 351-357 above was done in furtherance of their own private interests, and was willful, malicious, wanton, and oppressive, and done with conscious and callous indifference to the consequences and with specific intent to harm. Accordingly, Columbia is entitled to an award of punitive damages from Defendants and each of them in an amount to be proven at trial and sufficient to punish, penalize and deter Defendants from engaging in such conduct in the future.

SIXTH CLAIM FOR RELIEF

(Civil Conspiracy to Commit Fraud – Virginia (common law))

359. Plaintiff incorporates by reference and realleges the allegations in paragraphs 1 through 358 set forth above.

360. Virginia law makes it unlawful for a combination of two or more persons to accomplish, by some concerted action, some criminal or unlawful purpose or some lawful purpose by a criminal or unlawful means when there is resultant damage caused by the defendants' acts committed in furtherance of the conspiracy.

361. At all relevant times, the Defendants agreed to and did conspire to willfully and maliciously injure Plaintiff in its reputation, trade, business or profession through the fraud committed by the Seirus Enterprise as described below.

362. Defendants, through the Seirus Enterprise, have knowingly, willfully and intentionally conspired and agreed to conduct and participate in the conduct of the affairs of the Seirus Enterprise as described in the preceding section.

363. Defendants, and each of them, also conspired to commit the frauds alleged herein, in that all Defendants conspired to accomplish the IPR Funding Scheme and had a meeting of the minds to accomplish that goal through one or more unlawful acts of fraud, as alleged herein, and Columbia suffered harm as a result of Defendants' conduct and conspiracy.

364. As a direct and proximate consequence of the Defendants' conspiracy, Plaintiff has been injured in its business and property, causing Plaintiff to suffer monetary damages in an amount not less than \$700,000, said damages to be proven at the time of trial.

365. Defendants' conduct as alleged in paragraphs 359-364 above was done in furtherance of their own private interests, and was willful, malicious, wanton, and oppressive, and done with conscious and callous indifference to the consequences and with specific intent to harm. Accordingly, Columbia is entitled to an award of punitive damages from Defendants and each of them in an amount to be proven at trial and sufficient to punish, penalize and deter Defendants from engaging in such conduct in the future.

SEVENTH CLAIM FOR RELIEF

(Abuse of Process - Virginia)

366. Plaintiff incorporates by reference and realleges paragraphs 1 through 365 set forth above.

367. Defendants' conduct amounts to an abuse of process under Virginia law because they maliciously misused the Ventex IPRs to accomplish a purpose not warranted. Specifically, Defendants filed and litigated the Ventex IPRs with an ulterior purpose and improperly used process in the litigation of the Ventex IPRs.

368. Defendant Ventex, at the direction of at least Go, Park, Seirus, M. Carey, W. Carey, Murphy and John Doe Numbers 1-5, and with funding from Seirus, filed petitions for the Ventex IPRs on January 11 and 27, 2017 with knowledge that the law required it to identify all real parties-in-interest.

369. Defendant Ventex, at the direction of at least Go, Park, Seirus, M. Carey, W. Carey, Murphy and John Doe Numbers 1-5, and with funding from Seirus, identified only itself as a real party-in-interest, and did so with the knowledge that Seirus was a real party-in-interest to the Ventex IPRs, and with the knowledge that it was obligated by law to identify *all* real parties-in-interest to the Ventex IPRs.

370. Defendants' fraudulent filing, and subsequent litigation, of the Ventex IPRs was done intentionally and with the purpose and ulterior motive of delaying trial in the co-pending Seirus Oregon Action by way of the filing of a motion to stay in the Seirus Oregon Action.

371. Ventex, on November 6, 2017, also used the fraudulently-filed Ventex IPRs to move for a stay in the later co-pending Ventex Oregon Action, and was granted the stay by this Court.

372. Defendants' continued filing of papers in the Ventex IPRs while intentionally omitting the real party-in-interest, Seirus, was an improper use of the process in the regular litigation of the IPR proceedings.

373. As a direct and proximate consequence of the conduct of Defendants, and each Defendant, Plaintiff has been injured in its business and property, causing Plaintiff to suffer monetary damages in an amount not less than \$700,000, said damages to be proven at the time of trial.

374. Defendants' conduct was in furtherance of their own private interests, and was willful, malicious, wanton, and oppressive, and done with conscious indifference to the consequences and with specific intent to harm. Accordingly, Columbia is entitled to an award of punitive damages from Defendants, and each of them, in an amount to be proven at trial and sufficient to punish, penalize and deter Defendants from engaging in such conduct in the future.

EIGHTH CLAIM FOR RELIEF

(Exemplary Punitive Damages)

375. Plaintiff incorporates by reference and realleges paragraphs 1 through 374 set forth above.

376. Defendants' actions alleged above were malicious, willful and wanton, and were made with specific intent to harm Plaintiff.

377. Moreover, Defendants' actions violated 18 U.S.C. § 1343 as alleged in Plaintiff's First Claim for Relief, above.

378. Moreover, Defendants' actions violated ORS 162.065 and 162.075, as alleged in Plaintiff's Second Claim for Relief, above.

379. Moreover, Defendants' actions constitute fraud and conspiracy to commit fraud in the States of Oregon and Virginia as alleged in Plaintiff's Third through Sixth Claims for Relief, above.

380. Moreover, Defendants actions constitute abuse of process in the State of Virginia as alleged in Plaintiff's Seventh Claim for Relief, above.

381. In order to deter such conduct in the future, Plaintiff should be awarded exemplary punitive damages in an amount of not less than \$20,000,000.

JURY DEMAND

382. Pursuant to Fed. R. Civ. P. 38(b), Plaintiff hereby demands a trial by jury of all issues so triable that are raised herein or which hereinafter may be raised in this action.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

1. Finding that all defendants are jointly and severally liable for all damage caused to Plaintiff;
2. Awarding Plaintiff monetary damages in an amount not less than \$700,000, said amount to be proven at trial;
3. Awarding Plaintiff enhanced (treble) monetary damages pursuant to 18 U.S.C. § 1964(c) and ORS 166.725(7)(a);
4. Awarding Plaintiff its litigation expenses, including reasonable attorneys' fees, costs, and disbursements;
5. Awarding Plaintiff punitive damages in the sum of not less than \$20,000,000 or an amount otherwise to be decided by a jury; and
6. Granting such other relief as the case may require or as may be deemed proper and equitable.

Dated this 29th day of January, 2019.

Respectfully submitted,

SCHWABE, WILLIAMSON & WYATT, P.C.

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VENTEX CO., LTD.,
Petitioner,

v.

COLUMBIA SPORTSWEAR NORTH AMERICA, INC.,
Patent Owner

IPR2017-00651
Patent 8,424,119

Before JOSIAH C. COCKS, MITCHELL G. WEATHERLY, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

DECLARATION OF NIKA ALDRICH

REDACTED

I, Nika Aldrich, do hereby declare and say:

1. I am one of the attorneys for Patent Owner Columbia Sportswear North America, Inc. (“Columbia”) at the law firm of Schwabe, Williamson & Wyatt, P.C. I am attorney of record both in this proceeding and in the litigation between Columbia and Seirus Innovative Accessories, Inc. (“Seirus”), captioned *Columbia Sportswear North America, Inc. v. Seirus Innovative Accessories, Inc.*, Case No. 3:17-cv-01781-HZ (S.D. Cal.) (the “Seirus Litigation”).
2. I have personal knowledge of the matter set forth below, and if called as a witness, I could and would testify competently to these matters.

SUMMARY

3. Columbia has learned from its review of the limited discovery disclosures by Petitioner Ventex Co., Ltd. (“Ventex”) that:
 - a. Seirus is paying for these IPRs;
 - b. Seirus is doing so through a fraudulent scheme involving Ventex, intended to hide the fact that Seirus is the real-party-in-interest and is in privity with Ventex;
 - c. Ventex has either destroyed or is actively concealing evidence of this scheme;
 - d. This scheme has been orchestrated by at least Seirus and Ventex, and may involve one or more counsel for one or both parties; and
 - e. Ventex has either destroyed or is actively concealing other evidence directly responsive to Columbia’s discovery requests.

4. As explained further below, establishing the scope and further details of this scheme will require additional discovery of both Ventex and Seirus, along with their counsel.

BACKGROUND CONCERNING SEIRUS'S HEATWAVE FABRIC

5. Evidence adduced during the Seirus litigation established that:
- a. Columbia's Omni-Heat® Reflective fabric embodies its U.S. Patent Nos. 8,424,119 and 8,453,270 ("the Patents-in-Review").
 - b. Seirus began working with Ventex in 2012 to create a fabric printed with a discontinuous pattern of metal foil that would compete with Omni-Heat® Reflective fabric.
 - c. Ventex had a fabric called MegaHeat or MegaHeat RX to which it could adhere metal foil, and Seirus contracted with Ventex to buy MegaHeat fabric printed with metal foil.
 - d. Seirus designed a wavy pattern for the foil printing, replete with its name and logo, and provided that pattern to Ventex for use in creating product for Seirus.
 - e. Ventex prints Seirus's design as foil on Ventex's MegaHeat RX fabric. Both parties refer to this printed fabric as "HeatWave."
 - f. Seirus buys the HeatWave fabric from Ventex and has it shipped to Seirus's manufacturers in Asia to have garments made.

6. In 2013, Columbia filed a lawsuit against Seirus in the Western District of Washington and in April 2014, served Seirus with an amended complaint alleging that apparel made with HeatWave fabric infringes the Patents-in-Review, along with Columbia's D'093 design patent. (Exhibit 2127.) Thus, by April 2015,

pursuant to 35 U.S.C. § 315(b), Seirus had waived its right to file a petition for *inter partes* review of either of the Patents-in-Review.

7. As of January 2017, Columbia and Seirus were on the verge of trial, which was then scheduled for April 2017. (Exhibit 2128.) Against that background, Ventex filed the first of these IPRs on January 11, 2017. (IPR2017-00651, Paper 1.) It filed the second on January 27, 2017. (IPR2017-00789, Paper 1.) At the time these IPRs were filed, Columbia had not sued, threatened to sue, or even contacted Ventex about any alleged infringement of the two Patents-in-Review. But, following Ventex's filing of these IPRs, *Seirus* promptly notified the district court that the IPRs had been filed, and moved on two separate occasions to delay, stay, or postpone trial in the Seirus Litigation pending completion of these IPRs. (Exhibits 2162, 2163, 2164.)

8. This sequence of events, and the fact that Ventex is Seirus's contracted manufacturer for HeatWave, with a defense and indemnity agreement with Seirus, raised substantial questions that Ventex and Seirus were in privity in the filing of the IPRs.

VENTEX'S DISCOVERY RESPONSES

9. Pursuant to the Order Granting-in-Part Patent Owner's Motion for Additional Discovery (Paper 73), Columbia served Petitioner Ventex Co. Ltd. ("Ventex") with requests requiring production of documents constituting, relating,

or reflecting communications between Ventex and Seirus regarding Columbia or the Patents-In-Review. (Exhibit 2131.) Columbia also served an Interrogatory requiring Ventex to identify all non-written communications between Seirus and Ventex regarding the Seirus Litigation, Columbia, the Patents-in-Review, or either of these IPRs. (Exhibit 2132.) In both the requests for production and the interrogatory, “Seirus” and “Ventex” were defined to include their respective agents, including their attorneys.

10. Pursuant to the Board’s Order, Ventex was required to produce its documents no later than Thursday, October 4, and Columbia had until the following Monday to review those documents and inform the Board if it believed that a deposition of Ventex was in the interests of justice. Late in the day on October 4, 2018, Ventex produced 24,406 pages of documents. It took Thursday night and much of Friday to download them into a document review program, leaving Columbia what remained of Friday, Saturday, and Sunday to review and analyze 24,406 pages of documents in order to meet the Board’s Monday deadline. The vast majority of these documents were not responsive to Columbia’s requests for production. In the cover letter that accompanied the production, counsel for Ventex, David Garr, justified dumping tens of thousands of irrelevant pages on an opponent with a four-day response deadline by expressly representing to Columbia that he had produced all communications between Ventex and Seirus, “without

limitation by subject matter.” (Exhibit 2133.) Additionally, Ventex produced an Interrogatory Response, which purported to list all non-written communications between Ventex and Seirus on the indicated subjects. (Exhibit 2134.) Ventex also served a privilege log listing nine documents withheld on a claim of privilege. (Exhibit 2135.)

THE SCHEME BY WHICH SEIRUS IS FUNDING THESE IPRS

11. Included in the 24,406 pages of documents produced by Ventex were a number of purchase orders issued by Seirus to Ventex for HeatWave fabric.

12. Those purchase orders reveal that Seirus has been funneling large, implausibly disguised sums of money to Ventex beginning contemporaneously with the filing of these IPRs. The only plausible reason for these money transfers is to covertly fund these IPRs.

13. The purchase orders produced date from 2013 through 2018.

14. Purchase orders issued in 2013-2016 reflect only purchases of fabric, materials such as insulation, and occasionally new molds used in the production of fabric. (Exhibit 2126.) Ventex sold the fabric to Seirus pursuant to those purchase orders for prices ranging from [REDACTED] to [REDACTED] per yard.

15. On [REDACTED], within days of Ventex’s filing of the first of these IPRs, Seirus issued two purchase orders to Ventex, paying [REDACTED] for fabric at the same per-yard pricing as the other purchase orders. But these [REDACTED]

POs included a new, additional [REDACTED] per yard fee listed as a “HEATWAVE SURCHARGE”. (Exhibit 2125, pp. 1-3.) For example, one of the purchase orders had the following line item:

ROW STATUS	ITEM NO.	PLANNED SHIP DATE	DESCRIPTION	QTY ORDER	UoM	UNIT PRICE	EXTENSION
Open	HWSUR	03/10/2017	HEATWAVE SURCHARGE	10,100.0000		\$ 5.0000	\$ 50,500.00

16. In total, these two [REDACTED] purchase orders included [REDACTED] in this “Surcharge.” As shown above, the “HeatWave Surcharge” was designated as item number “HWSUR.”

17. The cost of the alleged “Surcharge” is telling. Whereas the bulk of the fabric costs [REDACTED] per yard, a new [REDACTED]/yard fee amounts to nearly a 100% “Surcharge” on the price of the fabric.

18. Notably, this “Surcharge” was not only ordered in the same month the IPRs were filed, but the amount appears to correlate to the cost of filing as well. At the time when these IPRs were filed, the filing fees for each of these IPRs were \$23,000, not including attorneys’ fees. 37 C.F.R. § 42.15 (July 1, 2016).

19. Later that same day, [REDACTED], without any documentary explanation, Seirus issued revised purchase orders changing the name of the “HeatWave Surcharge” to “HeatWave Exclusive License Fee.” (Exhibit 2125, pp. 4-8.) But the item number for this “License Fee” remained “HWSUR.”

20. Seirus had never paid a “Surcharge” or a “License Fee” for its fabric before. The fabric was the same HeatWave fabric it had been ordering for years.¹ Seirus entered into no new or different license agreements with Ventex in or before January 2017, and to Columbia’s knowledge, Seirus has never licensed any intellectual or other property rights from Ventex.

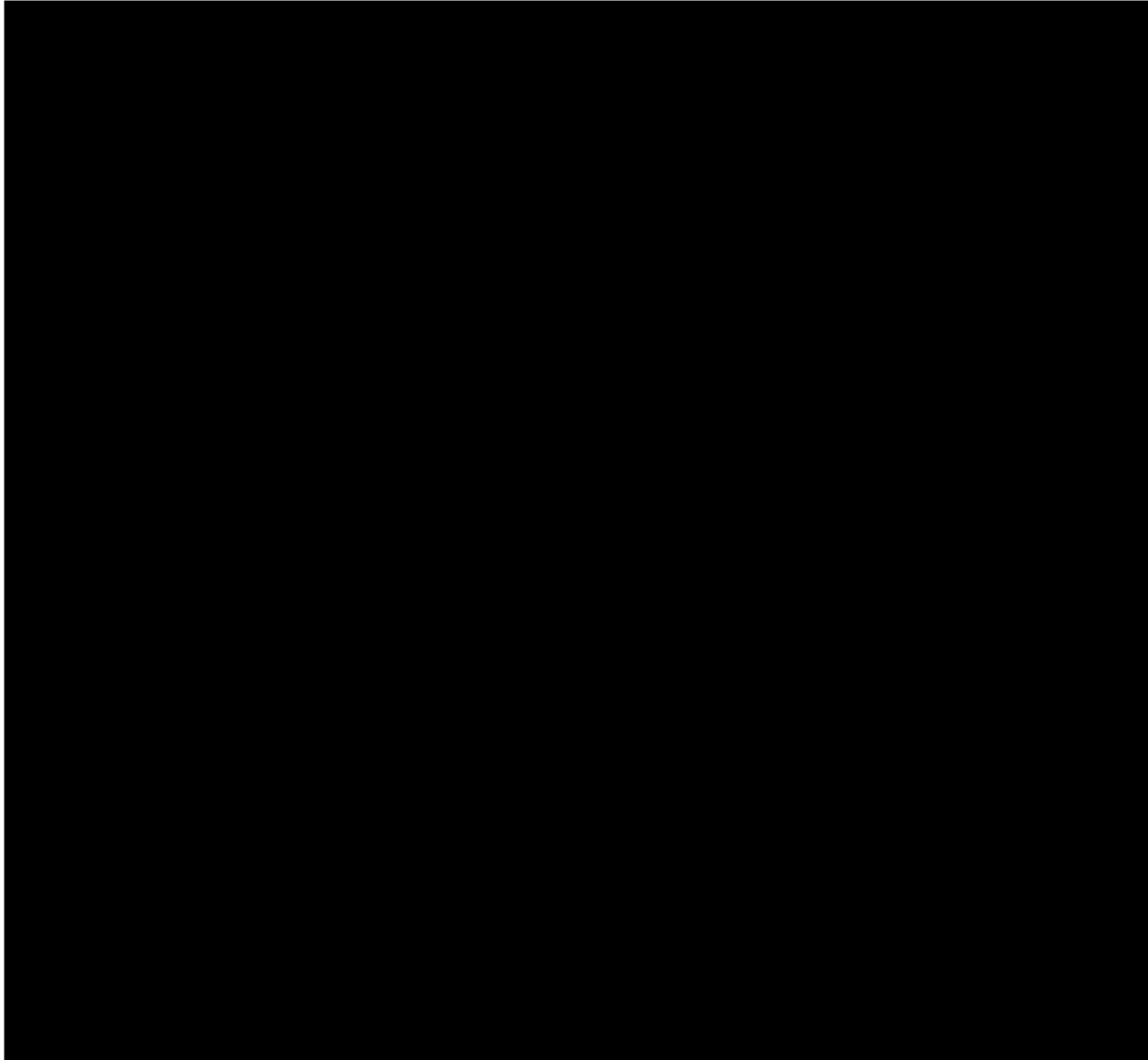
21. Seirus has continued to pay the “HeatWave Surcharge” redesignated as a “HeatWave Exclusive License Fee” ever since. In [REDACTED], Seirus committed to pay Ventex another [REDACTED] characterized as a “License Fee.” (*Id.*, pp. 9-11.) In [REDACTED], Seirus committed to pay Ventex [REDACTED], again characterized as a “License Fee.” (*Id.*, pp. 17-19.) In [REDACTED], right before oral argument in this case, Seirus placed an order committing to pay Ventex another [REDACTED] for “License Fee.” (*Id.*, pp. 35-37.) All told, since the eve of the IPR filings, Seirus has paid a total of [REDACTED] in “Exclusive HeatWave License Fee” through September 2018, as shown on the following page.² For reference, one study found

¹ For example, the “Description” of the primary product purchased [REDACTED] (Exhibit 2125.) That is the same product description, with the same item number ordered on numerous previous orders, when no “License Fee” was paid. (*See, e.g.*, Exhibit 2126, pp. 3-6, 8, 10-11, 17-18, 30, & 32-33.)

² All purchase orders from prior to these IPRs are in Exhibit 2126. All purchase orders following that date are in Exhibit 2125.

that IPRs cost approximately \$275,000 to litigate through trial. (Exhibit 2136.)

Given that Ventex filed two IPRs and litigated them together, the amount paid by Seirus closely approximates what Ventex likely has paid for this process.



22. To put these costs in their commercial context, on [REDACTED],

Seirus objected vehemently to a [REDACTED] increase in the price of one fabric, insisting to

Ventex that a [REDACTED] increase would have [REDACTED] [REDACTED] (Exhibit 2124.) But Seirus readily started paying a “License Fee” that nearly doubled its costs at the very time that Ventex filed these IPRs, and has continued to pay it through the pendency of these IPRs.

23. As explained above, Mr. Garr expressly represented to Columbia that Ventex had engaged in a “comprehensive search” for communications with Seirus and he had produced each and every communication with Seirus that the search revealed, “without limitation by subject matter.” (Exhibits 2133, 2152.) But other than these purchase orders and associated invoices, Ventex produced no documentation whatsoever concerning this “Surcharge”/“License Fee.”³ Ventex did not produce a license agreement, a surcharge agreement, or any documentation of or communications concerning Seirus’s agreement to pay this fee. Ventex produced tens of thousands of pages of emails negotiating the costs of fabric, molds, and testing, discussing safety testing, quality issues, manufacturing processes, shipping logistics, and even Ventex’s baby gift to an expecting Seirus employee. But Ventex did not produce an agreement governing the “Surcharge”/“License Fee” arrangement or *even a single email mentioning it*.

³ Seirus has never produced documents regarding these payments, either.

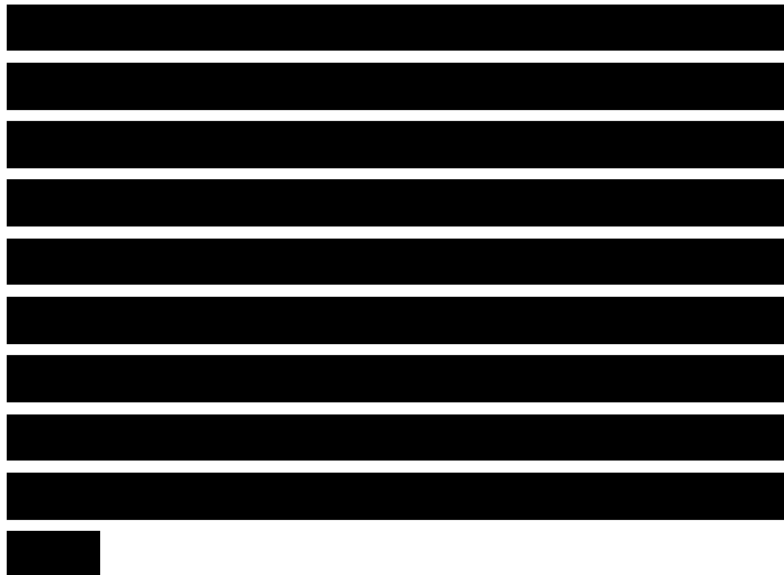
24. Taking as true Mr. Garr's representation that Ventex produced every communication with Seirus it could find,⁴ the fact that no documents about the Surcharge/License Fee were produced means that none exist. That means that Seirus paid in excess of [REDACTED] to Ventex *without entering into a written contract specifying what benefit Seirus was to receive in return*. It also means that Ventex and Seirus carefully avoided any reference to this agreement in email or other writing, neither negotiating the terms of this agreement nor even confirming the terms of the agreement in writing. This practice stands in stark contrast to the way in which these international parties otherwise did business, in which the parties' Vendor Manual agreement was renewed annually, prices were agreed upon in writing in advance, and even relatively minor expenditures were discussed in email. There is no legitimate explanation for this lack of documentation. The only rational reason Ventex and Seirus would have carefully avoided documenting a contract in which hundreds of thousands of dollars exchanged hands is that the purpose of this agreement was fraudulent.

25. This "License Fee" has no commercially reasonable basis other than to pay for these IPRs. The HeatWave design—found in the district court to infringe Columbia's D'093 design patent as a matter of law—was, according to Seirus,

⁴ Other than a single communication in 2015, Ventex's privilege log contains no documents before this "Surcharge" went into effect.

designed by Seirus and was proprietary to Seirus. It included Seirus's logo.

Moreover, the HeatWave fabric was work product that was developed pursuant to the Supplier Agreement that governed the parties' relationship. (Exhibit 2009.) In that Supplier Agreement and in annual Vendor Agreements, Ventex waived any and all rights it might have or have had in HeatWave to Seirus. Specifically, Ventex and Seirus agreed to the following provision at least six different times:



(Exhibits 2009-3(g), 2137-4, 2138-4, 2139-4, 2140-3, & 2141-3) (emphasis added).)

26. Thus, under the terms of no fewer than six contracts entered into between Seirus and Ventex, Ventex assigned any and all rights it might have had to HeatWave to Seirus.

27. As Ventex apparently owns no rights in HeatWave, it has no rights to license. Conversely, as Seirus owns the rights, it has no need for a license. Thus, the entire concept of a “license” appears to be a sham, meant to cover the fact that the fee was really a “surcharge,” consistent with the parties’ original nomenclature, meant to pay for these IPRs. It should be noted that, on all of the post-IPR purchase orders, Seirus more transparently uses the product code: “HWSUR,” for “HeatWave SURcharge” when “ordering” the alleged “License Fee” and making these misrepresented payments to Ventex.

28. In summary, all the while Ventex has insisted to the Board that it is the only real-party-in-interest in these IPRs, it has been accepting payment of hundreds of thousands of dollars from Seirus beginning when these IPRs were filed, pursuant to a secret, verbal agreement to pay a “surcharge” redesignated as a “license fee” for rights that Seirus actually owns and to which Ventex previously waived all claims. The only conceivable reason is that Seirus, being time-barred from filing these IPRs itself, is paying for Ventex to file and litigate these IPRs. The evidence leads to the solitary conclusion that Ventex filed these IPRs at Seirus’s behest, and is serving as Seirus’s proxy—that *Seirus* is the real-party-in-interest, and is in privity with Ventex, and that Ventex has engaged in a pattern of conduct intended to conceal these facts from Columbia and the Board.

**VENTEX HAS EITHER DESTROYED OR HAS BEEN ACTIVELY
CONCEALING DOCUMENTS**

29. Consistent with this pattern of conduct, other highly relevant emails concerning Ventex's relationship with Seirus regarding the Patents-in-Review throughout their history are inexplicably missing from Ventex's production.

30. Specifically, Columbia is in possession of numerous, significant communications between Ventex and Seirus in which the two companies collaborated in the defense against Columbia's assertion of its patents against Seirus. These documents include correspondence between Seirus and Ventex in relation to Fottinger, the prior art raised in these IPRs. One of these email strings had already been filed in these IPRs by Columbia. (Exhibit 2034.)

31. There is a December 2013 email thread in which Seirus's President sought information from Ventex regarding "a patent dispute with Columbia regarding their Omni Heat product," and Ventex responded by sending a copy of Fottinger. (Exhibit 2144.) Seirus's Robert Murphy was a liaison between the companies for this communication.

32. There are also emails between Seirus and Ventex from 2014 concerning potential prior art to the Patents-in-Review, which establish that Joori Hwang of Ventex and Robert Murphy had a telephone call regarding the legal effort to invalidate Columbia's patents. (Exhibit 2143.)

33. There was also an email thread in 2015, in which Seirus's trial attorneys (Troutman Sanders) and in-house attorney (Scott DeNike) along with other employees of Seirus and Ventex communicated via email in order to [REDACTED]
[REDACTED]
[REDACTED] (Exhibit 2142-6, *et. seq.*)

34. Exhibits 2145-2149 are still more documents reflecting communications between Seirus and Ventex made in order to share information and collaborate in defense against Columbia's patents.

35. All of these communications between Seirus and Ventex are responsive to Columbia's document requests to Ventex. These communications were directly on point, as opposed to the vast majority of documents that Ventex dumped on Columbia concerning baby gifts, shipping logistics, and quality control. ***But not a single one of these documents was produced by Ventex*** or logged in its privilege log. Instead, all of these communications were produced only by ***Seirus*** in the Seirus Litigation. Some of these emails make reference to attachments that have never apparently been produced by either party. Moreover, although there may have been some overlap, the document requests to Ventex are different from the requests to Seirus and include a more expansive time period.

36. Counsel for Ventex insists that Ventex produced all documents it could find (Exhibits 2133, 2152), and in follow-up, Ventex's attorneys insisted that its discovery obligations are complete. (Exhibit 2152.) It produced thousands of other, non-responsive documents from the same timeframe. Accordingly, Ventex has either destroyed these highly relevant documents or it is actively concealing these documents in which it collaborated with Seirus in the legal defense against Columbia. It is not clear how many *other* communications—*i.e.*, ones that Columbia does not fortuitously already have in its possession⁵—Ventex has either destroyed or is actively concealing. Notably, Columbia's counsel asked Ventex's counsel whether any relevant communications had been destroyed, and Ventex's counsel refused to answer. (Exhibit 2152.)

**VENTEX'S INTERROGATORY RESPONSE IS INCOMPLETE, AND
THEREFORE CONSTITUTES A FALSE STATEMENT.**

37. Ventex has also failed to disclose non-written communications, as required by Columbia's Interrogatory.

38. The emails produced by Seirus establish that counsel for Seirus and Ventex communicated by phone regarding Columbia and Columbia's patents on multiple occasions.

⁵ Columbia has no basis to believe that Seirus produced all communications responsive to the requests to Ventex.

39. For example, on [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Exhibit 2142.)

40. Additionally, on [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] (Exhibit 2149.) None of these conversations is listed in Ventex's

Interrogatory Response. (*Cf.* Exhibit 2134.)

41. The documents that Ventex did produce further demonstrate that Ventex and Seirus frequently met in person and sometimes spoke by phone. On at least one occasion during the pendency of these IPRs, Ventex urgently sought a phone call with Mr. Murphy while apparently speaking in code in order to avoid disclosing the subject matter of the call. (Exhibit 2153.)

42. As Ventex's privilege log and Exhibits 2142-2144 and 2149 demonstrate, [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]

43. Ventex's Interrogatory Response does not list a single conversation between Mr. Murphy and any Ventex employee.

44. Ventex's Interrogatory Response also omits at least one episode of communication concerning these IPRs in which Ventex's attorney of record, Mr. Garr, personally participated.

⁶ Ex. 2154.

⁷ Ex. 2155.

⁸ Ex. 2156.

⁹ Ex. 2157.

¹⁰ Ex. 2158.

¹¹ Ex. 2159.

¹² Ex. 2160.

¹³ Ex. 2161.

45. On January 30, 2017, I sent an email to Mr. Garr asking whether Ventex would oppose my motion to appear *pro hac vice* in these IPRs on behalf of Columbia. The following day, at 10:27am, Mr. Garr responded stating:

We noticed that the protective order in the [Seirus] litigation includes a bar on prosecution activity (defined to include IPRs) for persons who have reviewed an opposing party's "Prosecution Bar Materials" in that proceeding.

Would you please confirm whether you . . . have had access to any such Prosecution Bar Materials?

(Exhibit 2150.)

46. Three hours later, at 1:26pm ET, Katie Balthrop, an attorney at Troutman Sanders representing Seirus in the Seirus Litigation, sent me a cryptic message seeking to meet and confer in advance of a motion that Seirus was planning to file in the Seirus litigation. (Exhibit 2151.) At 4:38pm ET, I emailed Ms. Balthrop and asked what motion Seirus intended to file. (*Id.*) Ms. Balthrop responded that she would not disclose the nature of the motion by email, and only wanted to speak by telephone. (*Id.*)

47. An hour and a half later, at 6:17pm Eastern time, I emailed Mr. Garr and informed him that I was temporarily withdrawing my request concerning *pro hac vice* admission. (Exhibit 2150.)

48. The following day, on February 1, Ms. Balthrop emailed me and stated: “I can confirm for you that I do not need to meet and confer with you about anything at this time. I withdraw my earlier request.” (Exhibit 2151.)

49. Notably, by January 2017, discovery had closed in the Seirus litigation, and the parties at that time were awaiting various rulings by the Court on outstanding issues in preparation for trial. On January 10, 2017, Judge Hernandez postponed all decisions in the case for one month pending a possible conflict of interest. (Exhibits 2129, 2130.) Accordingly, there were zero communications from Seirus’s counsel to Columbia’s counsel between January 10, 2017 and Ms. Balthrop’s out-of-the-blue January 31 email.

50. Against this backdrop, all indications were that Ms. Balthrop, *Seirus’s counsel*, contacted me in response to my asking *Ventex’s counsel* to be admitted in these IPRs on a *pro hac vice* basis, following up on *Ventex counsel’s* concerns about the *Seirus* protective order.

51. Nobody from Columbia notified Seirus that I intended to move to be admitted to the IPR *pro hac vice*. Likewise, nobody from Columbia notified Seirus that I had withdrawn that request. The only way that Seirus could have learned of any of this was from Ventex or its counsel.

52. In its Petitioner’s Reply to Patent Owner’s Preliminary Response, Ventex acknowledged that there indeed were communications between Seirus and Ventex on this subject:

Columbia also asserts that Petitioner and Seirus “appear to be collaborating both in this *inter partes* review and in the district court litigation.” (POPR at 45–46.) . . . **The “collaboration” merely relates to the parties’ efforts to ensure Columbia’s protective order compliance.** Given that Petitioner is barred from accessing confidential documents in the *Seirus* litigation, . . . it is hardly surprising that Petitioner and Seirus would each carefully scrutinize Columbia’s actions, as it sought to intermingle and cross-use confidential information across the matters. (Emphasis added.)

53. Yet neither Ventex’s Interrogatory Response nor its Privilege Log list any communications between January 30 and February 1, 2017.

VENTEX’S CONDUCT IS PLAINLY INCONSISTENT WITH ITS DUTY OF CANDOR TO THIS TRIBUNAL.

54. Throughout its participation in these IPRs, Ventex and its counsel have had a duty of candor to this tribunal. The Board emphasized this duty with both parties in the context of Columbia’s motion to amend. In filing these IPRs, Ventex’s counsel affirmatively stated under penalty of sanctions, that Ventex was the only real-party-in-interest in these IPRs. (Paper 1); *see also* 37 C.F.R. § 42.11.

And throughout its participation in these IPRs, Ventex has maintained its position that it is not in privity with Seirus and that it is the only real-party-in-interest, and has vehemently opposed any discovery into these issues. Meanwhile, Ventex has been in possession of facts and evidence indicating otherwise, including Seirus's substantial "surcharge" payments to Ventex, timed and in an amount correlating with the prosecution of these IPRs, and communications between Seirus and Ventex regarding their mutual attack on the validity of Columbia's patents. Ventex has actively concealed this evidence from Columbia and from this tribunal.

**EXTENSIVE ADDITIONAL DISCOVERY IS NEEDED TO UNCOVER
THE FACTS OF THIS SCHEME.**

55. Mr. Garr's participation has not been adequate to secure complete and accurate discovery responses from Ventex. Ventex and Seirus have been communicating regarding Columbia and its patents since 2013. And yet in responding to Columbia's Interrogatory, Mr. Garr listed only a handful of communications in all of which he had personally participated. Mr. Garr knew about Ventex's patent counsel, as he listed a communication involving them on the privilege log. I have no way of knowing whether Mr. Garr asked Ventex's other attorneys if they had ever spoken to Seirus or its counsel. We asked Mr. Garr and he refused to answer. (Exhibit 2152.) But I know from the documents produced by Seirus that [REDACTED], and those conversations were not listed in the Interrogatory Response.

56. I also have no way of knowing whether Mr. Garr asked any Ventex employee about communications with anyone at Seirus. We asked Mr. Garr that, too, and he again refused to answer. (Exhibit 2152.) But I know that on [REDACTED]
[REDACTED]
[REDACTED] (Ex. 2143-3). Mr. Garr did not list any such phone call in the Interrogatory Response.

57. I also do not know if Mr. Garr knew about the “Surcharge”/“License Fee” funding scheme. But I know that Mr. Garr’s participation in the discovery process did not result in the disclosure of communications regarding this scheme.

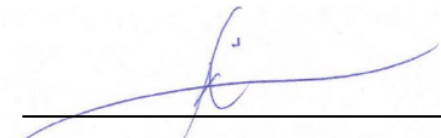
58. We are loathe to accuse opposing counsel of violating his duty of candor. But to avoid accusing Mr. Garr of wrongdoing, we must infer that those who have conjured up and are implementing the IPR funding scheme and the rampant destruction or concealment of evidence behind the scenes are intentionally keeping Mr. Garr shielded from the facts.

59. For these reasons, while a deposition of Ventex is plainly in the interests of justice, given Ventex’s plain disregard of its duty of candor and the apparent coordinated effort by Seirus and Ventex, Columbia cannot be certain that a deposition of any particular witness at Ventex will be adequate to reveal the truth about Ventex’s relationship with Seirus as it pertains to the Seirus Litigation and these IPRs. Any given Ventex representative may be strategically ignorant of the

facts of this situation. For that reason, depositions of a representative of Ventex who has been required by the Board to become knowledgeable of all pertinent facts in accordance with Fed. R. Civ. P. 30(b)(6) is in the interests of justice. Also necessary to uncover the truth are document requests to and depositions of Seirus and the law firms Troutman Sanders, Fish & Richardson, and Covington Burling.

I declare that all statements made herein of my knowledge are true, and that all statements made on information and belief are believed to be true, and that these statements were made with the knowledge that willful false statements and the like so made are punishable by fine or imprisonment, or both, under Section 1001 of Title 18 of the United States Code.

Dated: October 15, 2018



Nika Aldrich

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on the 15th day of October, 2018, a complete and entire copy of the **DECLARATION OF NIKA ALDRICH** was served on counsel of record by filing this document through the PTAB E2E System, as well as by delivering a copy via electronic mail to the Petitioner's known representatives at the e-mail addresses noted below:

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Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

By: /Brenna K. Legaard/
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VENTEX CO., LTD.,
Petitioner,

v.

COLUMBIA SPORTSWEAR NORTH AMERICA, INC.,
Columbia

IPR2017-00651
Patent 8,424,119 B2

Before JOSIAH C. COCKS, MITCHELL G. WEATHERLY, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

COLUMBIA’S MOTION FOR ADDITIONAL DISCOVERY

Patent Owner Columbia Sportswear North America, Inc. (“Columbia”) asks that the Board require Petitioner Ventex Co., Ltd (“Ventex”) to provide discovery regarding its participation in the defense of its customer, Seirus Innovative Accessories, Inc. (“Seirus”) against a patent infringement lawsuit alleging

infringement of the patents at issue in these IPRs. The lawsuit, which was filed by Columbia, is entitled *Columbia Sportswear North America, Inc. v. Seirus Innovative Accessories, Inc.*, Case No. 3:17-cv-01781 (S.D. Cal.), formerly Case No. 3:15-cv-00064-HZ (D. Or.) (“the Seirus litigation”). This Board authorized this motion in its August 20, 2017 Order (Paper 20). Columbia’s proposed discovery requests--many modeled after requests approved by the Board in the past—are submitted as Exhibit 2036. These requests comply with the *Garmin* factors articulated in *Garmin International, Inc. v. Cuozzo Speed Technologies, LLC*, IPR2012-0001, Paper 26 (PTAB Mar. 5, 2013), as is explained below, and permitting this additional discovery is in the interests of justice under 37 C.F.R. §42.51(b)(2), as is also set forth below.

I. **GARMIN FACTOR 1: WHETHER SOMETHING USEFUL WILL BE FOUND**

Columbia has ample, specific reasons to expect that the requested discovery will yield substantive support for its contention that this proceeding is barred under 35 USC § 315(b).

Under 35 USC § 315(b), Ventex is barred from pursuing this IPR if its privy was served with a complaint alleging infringement of the ‘119 Patent more than a year before the Petition was filed. There is no dispute that Ventex’s customer Seirus was served with a complaint alleging that Seirus infringed the ‘119 Patent for selling products made from Ventex’s fabric more than a year before Ventex

filed its petitions for *inter partes* review. Through the course of the Seirus litigation, Seirus has contested the validity of the patents at issue in using the same references asserted in this IPR. The Seirus litigation goes to trial this month. Thus, if Seirus is Ventex's privity, this IPR is barred by statute.

Through § 315(b), Congress sought "to protect patent owners from harassment via successive petitions by the same or related parties, to prevent parties from having 'a second bite at the apple,' and to protect the integrity of both the USPTO and the Federal Courts by assuring that all issues are promptly raised and vetted." *Office Patent Trial Practice Guide*, 77 Fed. Reg. 48,759. The Guide states that the PTO will evaluate privity "with these goals in mind." *Id.* Columbia believes that Ventex filed this IPR after it either litigated or had an opportunity to litigate validity of these patents in District Court through control of Seirus's defense, and permitting Ventex to pursue this IPR means permitting it a second bite of the apple, eroding the integrity of both the Federal District Court and the USPTO.

A. Privity Exists where a Contract Provides an Opportunity to Control Litigation.

"Privity is essentially a shorthand statement that collateral estoppel is to be applied in a given case. . . . The concept refers to a relationship between the party to be estopped and the unsuccessful party in the prior litigation which is sufficiently close so as to justify application of the doctrine of collateral estoppel."

Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,759 (Aug. 14, 2012) (quoting 154 Cong. Rec. S9987 (daily ed. Sep. 27, 2008) (statement of Sen. Kyl)).

A contractual relationship that provides a non-litigant with control over litigation gives rise to collateral estoppel. *General Electric Co. v. Transdata, Inc.*, IPR2014-01559, Paper 23 (PTAB April 15, 2015) (citing *Benson & Ford, Inc. v. Wanda Petroleum Co.*, 833 F.2d 1172, 1174 (5th Cir. 1987); *Schnell v. Peter Eckrich & Sons, Inc.*, 365 U.S. 260, 262 n.4 (1961)).

Privity has also been found where an agreement provides an opportunity to exert partial control over the litigation, even if it is not exercised. “The concept of control generally means that it should be enough that the nonparty has the actual measure of control or opportunity to control that might reasonably be expected between two formal coparties.” *Office Patent Practice Guide*, 77 Fed. Reg. 48,759; *General Electric Co. v. Transdata, Inc.*, IPR2014-01559, Paper 23 (April 15, 2015) (finding privity where Petitioner’s indemnification agreement provided an obligation to defend the indemnitee and thus the opportunity to share control over the litigation with its indemnitee.).

B. The Supplier Agreement Entered into by Seirus and Ventex Provided Ventex with the Opportunity to Control the Seirus Litigation.

Columbia sued Seirus for infringing the ‘119 Patent because Seirus imports and sells products made from a heat-reflecting fabric made by Ventex called

MegaHeat RX. Columbia contends that the importation and sale of articles of body gear made from MegaHeat RX infringe the ‘119 Patent.

Ventex provides MegaHeat RX to Seirus pursuant to a supplier agreement (“Supplier Agreement”). IPR2017-00651, Paper 9, Ex. 2009 (May 2, 2017). The parties entered into the Supplier Agreement on March 9, 2013, a few days after Seirus sent Ventex its first bulk order for MegaHeat RX fabric, and about a month before the delivery deadline specified in the order. [See Ex. 2037; Ex. 2038.] The Supplier Agreement was signed approximately a year before Columbia served Seirus with its initial complaint for patent infringement. Seirus does not purchase the accused fabric from any source other than Petitioner. [See Ex. 2039.] Seirus does not purchase any other fabric from Petitioner. [Id. at pp. 2039-3, 2039-4.] MegaHeat RX is the only product Seirus has ever purchased from Petitioner. [Id. at 2039-5.].

The Supplier Agreement requires Ventex to “indemnify, defend, and hold Seirus harmless for any claims, liabilities, expenses, fees, losses, penalties, costs, and/or damages incurred arising out of failure by [Ventex] to perform its obligations hereunder including any violation of the Code of Conduct.” IPR2017-00651, Paper 9, Ex. 2009-3 (May 2, 2017). In the Code of Conduct, section II(i), Ventex promised Seirus that it will “comply with all applicable laws and regulations, including those pertaining to the manufacture, pricing, sale and

distribution of merchandise.” [*Id.* at 2009-2.] Ventex dismisses this language as “boilerplate” and “generic,” but Ventex does not contend this provision does not cover Columbia’s patent infringement claims against Seirus.

Ventex contends, and Columbia agrees, that an indemnification agreement alone does not create privity. But the Supplier Agreement requires Ventex to indemnify and *defend* Seirus. “The duty to indemnify is distinct from the duty to defend: the former requires one party to indemnify the other, under specified circumstances, for moneys paid or expenses incurred as a result of a third party claim, while the latter assigns one party responsibility for the other’s legal defense when a third party claim is made.” *Aluma Systems Concrete Construction of California v. Nibbi Bros. Inc.*, 2 Cal. App. 5th 620, 206 Cal. Rptr. 3d 394 (Cal. App. 1st Dist. Aug. 16, 2016). Thus, the Supplier Agreement does not merely require Ventex to pay Seirus’s damages should any be awarded. It affirmatively assigns to Ventex responsibility for Seirus’s defense.

Ventex and Seirus agreed that the Supplier Agreement “shall be governed by and construed in accordance with the laws of the State of California.” IPR2017-00651, Paper 9, Ex. 2009-4 (May 2, 2017). Thus, in determining what “defend” means in the Supplier Agreement, the Board must look to California law. Under California law, a contractual duty to defend is “an obligation of active responsibility, from the outset, for the promisee’s defense against such claims. The

duty promised is to render, or fund, the service of providing a defense on the promisee's behalf.” *Crawford v. Weather Shield Mfg. Inc.*, 44 Cal. 4th 541, 187 P.3d 424, 431 (Cal. S.Ct. 2008). “A duty to defend another... is thus different from a duty expressed simply as an obligation to pay another, after the fact, for defense costs the other has incurred in defending itself.” *Crawford*, 187 P.3d at 432. Unless Ventex proffered a defense and Seirus rejected it, Ventex was responsible for, and thus had an opportunity to control, Seirus's defense.

C. When Ventex and Seirus Entered into the Supplier Agreement, They Anticipated Columbia's Suit.

At the time they entered into this agreement, Ventex was actively preparing for Columbia's lawsuit. On April 4, 2013, days after Ventex signed the agreement, Seirus received an email from Ventex attaching a design patent owned by Columbia and the Fottinger reference asserted by Ventex in this action. The email stated:

I believe you already considered the similarity with Columbia's Omniheat and MegaHeat RX. As we are expanding business to America, we are checking patents. We found a little similar wave pattern. However, per our attorney, there will be no problem as your design factor because of logo and irregular wave. I attached Columbia's one for your reference. For your information, I attached the one docs for helping the potential issue of patent with Columbia for the future....

IPR2017-00651, Paper 9, Ex. 2034-1 (May 2, 2017).

When the original recipient of this email, Seirus employee Morgan Chin, forwarded the email to Robert Murphy, Seirus's Vice President of Operations, along with a request that he "follow up if there's something we need to do," Mr. Murphy's only response was to ask Ms. Chin "Have these guys signed our supplier agreement?" Ms. Chin responded that Ventex had signed the agreement. [Ex. 2040.] Seirus then took no apparent action to avoid infringing Columbia's patents.

Thus, while Ventex claims that the indemnification and defense clause in the Supplier Agreement was "generic," it appears to have been highly relevant to Seirus's leadership as they decided how to proceed considering the likelihood that Columbia would sue for patent infringement.

D. The Same Opportunity to Control has been Found Sufficient to Create Privity

In *General Electric Co. v. Transdata*, the Board found that the IPR was barred where Petitioner and a prior litigant entered into an agreement stating that Petitioner would "provide a full and unqualified defense to OG&E" and that Petitioner would "direct and control the litigation, provided that [Petitioner] and its counsel will keep OG&E timely informed of all material activity in the case and will solicit OG&E's input and assent on all material decisions in the case." IPR2014-01559, Paper 23, pp 9-10. The Board found privity even though the petitioner asserted that it had not actually exercised control. The Board also determined that the opportunity to control was sufficient to create privity even

though OG& E's input and assent were required with respect to all material decisions.

The opportunity to control that was present in *General Electric* exists here by virtue of the Supplier Agreement and operation of California law. Because the Supplier Agreement includes an explicit promise to defend, Ventex is contractually obligated to provide a full and unqualified defense to Seirus. Under California law, a duty to defend creates collateral estoppel even if a contractual indemnitor fails to assume the defense. "If a contractual indemnitor declines the indemnitee's tender of defense of a third party claim against the latter, the third party's later judgment against the indemnitee may be conclusive evidence, against the indemnitor, of the indemnitee's liability to the third party, and the amount thereof." *Crawford*, 44 187 P.3d at 432, n. 6.

By operation of California law, in entering into an agreement governed by California law that contained a duty to defend, Ventex was accepting a responsibility to actively defend claims against Seirus. It did so knowing that Columbia was likely to sue for patent infringement, and it began providing its customer with a defense even before it filled the first bulk order for the infringing fabric by sending Seirus the Fottinger reference, which is the center of Seirus's invalidity case in the Seirus litigation.

For these reasons, the additional discovery requested by Columbia will show whether Seirus asked Ventex to defend it against Columbia's claims, how Ventex responded to those requests, and the extent to which Ventex participated in Seirus's defense. The requests are highly material and it is in the interests of justice that they be permitted.

II. **GARMIN FACTOR 2: LITIGATION POSITIONS AND UNDERLYING BASIS**

Columbia's requested discovery is not drawn to Petitioner's litigation position or underlying basis.

III. **GARMIN FACTOR 3: ABILITY TO GENERATE EQUIVALENT INFORMATION BY OTHER MEANS**

There is no other way for Columbia to obtain this information. Columbia was not permitted to conduct discovery in the Seirus litigation regarding the indemnification provision in the Supplier Agreement or the extent of Petitioner's involvement in the litigation. Seirus designated Bob Murphy, its Vice President of Operations, to testify about Seirus's contractual relationship with Ventex, but when Mr. Murphy was asked if Seirus had invoked or even discussed the indemnification clause in the Supplier Agreement, he answered that he did not know. IPR2017-00651, Paper 9, Ex. 2022-3 (May 2, 2017). When Columbia sent a third notice of deposition requesting testimony from Seirus specifically on that topic, Seirus refused to provide it. IPR2017-00651, Paper 9, Ex. 2037-17, 18 (May 2, 2017).

IV. **GARMIN FACTOR 4: EASILY UNDERSTANDABLE INSTRUCTIONS**

Columbia's requests and instructions are simple and straightforward.

V. **GARMIN FACTOR 5: REQUESTS NOT OVERLY BURDENSOME TO ANSWER**

Columbia's Requests are few in number and are as narrowly focused as possible without permitting Ventex to adopt a narrow interpretation that frustrates their purpose.

Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

Date: September 6, 2017

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on the 6th day of September, 2017, a complete and entire copy of this **COLUMBIA’S MOTION FOR ADDITIONAL DISCOVERY** was served on counsel of record by filing this document through the PTAB E2E System, as well as by delivering a copy via electronic mail to the Petitioner’s known representatives at the e-mail addresses noted below:

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Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

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2017-09-06 - 119 IPR Exhibit List

2036	Patent Owner's Proposed Discovery Requests to Petitioner
2037	Chin Ex. 19
2038	Chin Depo Excerpts
2039	Murphy Depo Excerpts
2040	Chin Ex. 25

The exhibits should be marked as follows:

Columbia Sportswear North America, Inc. 2002-1
Ventex Co. Ltd. v. Columbia Sportswear North America, Inc.
IPR2017-00651

Trials@uspto.gov
571-272-7822

Paper 98
Date: November 19, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VENTEX CO., LTD.,
Petitioner,

v.

COLUMBIA SPORTSWEAR NORTH AMERICAN, INC.,
Patent Owner.

Case IPR2017-00651; Patent No. 8,424,119 B2
Case IPR2017-00789; Patent No. 8,453,270 B2¹

Before JOSIAH C. COCKS, MITCHELL G. WEATHERLY, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

ORDER
Conduct of the Proceeding
37 C.F.R. § 42.5(a)

¹ This Order is relevant to each of the noted proceedings. The Board exercises its discretion to issue a single Order for entry in each proceeding. The parties are not authorized to use this style heading for any subsequent papers.

IPR2017-00651; Patent 8,424,119 B2

IPR2017-00789; Patent 8,453,270 B2

1. Introduction

A conference call was held on November 16, 2018. Judges Cocks and Marschall were present for the call. Petitioner, Ventex Co., Ltd., (“Ventex”), was represented by David Garr, Daniel Cho, and Peter Chen. Patent Owner, Columbia Sportswear North America (“Columbia”), was represented by Nika Aldrich, Brenna Legaard.² Seth Sproul, counsel with Fish & Richardson, participated in an initial portion of the call on behalf of a third party, Seirus Innovative Accessories, Inc. (“Seirus”). Columbia requested the call to discuss matters concerning the accuracy of statements provided by declarant Mr. Paul Park in this proceeding in connection with a declaration (Ex. 1091), interrogatory responses (Ex. 2187), and deposition testimony (Ex. 2188).

2. Discussion

During the call, Columbia explained that throughout the course of these *inter partes* review proceedings, Mr. Park had repeatedly represented that a 2016 exclusivity agreement entered into by Seirus and Ventex had never been reduced to writing. Columbia, however, informed the panel that on Friday, November 9, 2018, Seirus had produced to Columbia an executed copy of a written agreement titled “Exclusive Manufacturing Agreement” made on October 21, 2016 between Seirus and Ventex. *See* Ex. 2189. Seirus had also produced e-mails between Mr. Park and a representative of Seirus in which Mr. Park expressed knowledge of the Exclusive Manufacturing Agreement. *See* Ex. 2190. Columbia actively is advocating in these proceedings that Ventex had failed to name all the real parties-in-

² Judge Weatherly was unavailable, and did not attend the conference call.

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interest in its Petitions, and had based much of its case in that respect on the absence of a written document of the exclusivity agreement between Ventex and Seirus. Columbia, thus, urged that it has been prejudiced by the inaccuracies present in the record as to that written agreement, and sought to discuss the situation with the panel, including the possibility of additional discovery and sanctions.³

During the call, Columbia's counsel also represented that Seirus had permitted Ventex's counsel to disclose all relevant documents to Ventex's employees but refused to permit disclosure of the written exclusivity agreement, or even its existence, to employees of Columbia. As a result, Columbia's counsel expressed that it could not consult with its client, Columbia, or disclose the content to Columbia of briefing that Columbia's counsel is set to file on behalf of Columbia on Monday, November 19, 2018. Columbia's counsel, thus, requested leave to discuss the issue with Columbia, including disclosing the written exclusivity agreement to in-house counsel of Columbia, who have signed the proposed Protective Order that has been filed in this proceeding (Paper 14, Appendix A). On behalf of Seirus, Mr. Sproul objected to permitting Columbia's counsel to disclose the written exclusivity agreement to any employee of Columbia. Mr. Sproul's

³ Ventex's counsel expressed on the call that it, Ventex's CEO, Mr. Kyung Chan Go, and Mr. Park had engaged in supplemental search efforts but had not been able to locate any copies of the exclusivity agreement that had been produced by Seirus, or any of the e-mails referencing that agreement by Mr. Park.

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objection in-part was based the Protective Order permitting in-house counsel for Columbia to view material subject to that Protective Order.⁴

A.

The record reflects that Ventex is in possession of the “Exclusive Manufacturing Agreement,” as well as e-mails from and to Mr. Park referencing that agreement. Ventex represented that its briefing to be filed on November 19, 2018, would reference the “Exclusive Manufacturing Agreement” and discuss its contents. Ventex also noted that throughout these proceedings, although Ventex had represented that the exclusivity agreement was not in written form, its briefing had made reference to much of the content that actually was reduced to writing in the “Exclusive Manufacturing Agreement.” Columbia’s counsel also expressed that it’s briefing will discuss content of the “Exclusive Manufacturing Agreement.” It is untenable that Columbia be placed into a situation in which its counsel must submit briefing in these proceedings on Columbia’s behalf without opportunity for Columbia to assess and approve the content of such briefing. Such circumstance, in and of itself, is suitable reason that Columbia’s in-house counsel be made aware of the existence and content of the “Exclusive Manufacturing Agreement” and certain associated e-mail correspondence.

Furthermore, it is curious that Ventex did not maintain copies of business documents, such as the “Exclusive Manufacturing Agreement”, in the normal course of business. Had it done so, Ventex would have been obligated to produce that agreement and any associated e-mails referencing

⁴ On the call, Columbia’s counsel, Mr. Aldrich, expressed that he had provided a copy of the proposed Protective Order to Mr. Sproul prior to document production by Seirus.

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that agreement as a part of these proceedings. From a perspective of procedural fairness, Ventex should not somehow benefit from inadequate record keeping.

Accordingly, for the reasons set forth above and as requested by Columbia's counsel, we authorize Columbia's counsel to disclose the "Exclusive Manufacturing Agreement" (Ex. 2189), and particular e-mails from and to Mr. Park referencing that agreement (Ex. 2190) to Columbia's in-house counsel.

B.

During the conference call, Columbia also raised issues pertaining to authorization to: (1) depose Mr. Go; (2) file a motion for additional discovery relating to the underlying background surrounding the "Exclusive Manufacturing Agreement"; and (3) file a motion for sanctions in connection with Columbia's attorneys' fees that were spent based on Mr. Park's inaccurate testimony. Ventex indicated that, prior to any of the above-noted requested actions, it would file a corrected Declaration of Mr. Park that explains and corrects inaccuracies in his testimony, and also file a Declaration from Mr. Go explaining his knowledge of the "Exclusive Manufacturing Agreement." In the event that even after such filings, Columbia seeks additional authorization for depositions and filings, Columbia should provide to the Board, via e-mail, a short bulleted list of the authorizations that it seeks as well as proposed page lengths and timing of any such briefing.

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3. Order

It is

ORDERED that Columbia's counsel is authorized to disclose the "Exclusive Manufacturing Agreement" (Ex. 2189), and particular e-mails from and to Mr. Park referencing that agreement (Ex. 2190) to Columbia's in-house counsel; and

FURTHER ORDERED that Ventex is authorized to file a corrected Declaration of Mr. Park and a Declaration of Mr. Go explaining his knowledge of the "Exclusive Manufacturing Agreement."

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VENTEX CO., LTD.,
Petitioner,

v.

COLUMBIA SPORTSWEAR NORTH AMERICA, INC.,
Patent Owner

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PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY

REDACTED

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At the hearing on October 16, 2018, Ventex asked for “an opportunity to investigate and provide any further responsive information to Columbia . . . include[ing] a declaration from a Ventex witness addressing various allegations that have been raised.” (Ex. 1087, 16:4-7.) The Board granted that request. (Paper 78.) Following its investigation, however, counsel for Ventex decided *not* to submit a sworn declaration under penalty of perjury. Instead, on October 22, Ventex provided a brief supplement to its interrogatory response and also produced over 2,000 pages of communications and other responsive documents that it had previously withheld from its production, in apparent contradiction of Mr. Garr’s representation that Ventex produced all communications with Seirus “without limitation by subject matter.”¹ (*Cf.* Ex. 2133.)

The documents definitively refute any possibility that the “fee” paid by Seirus is a license fee or has any legitimate explanation. They conclusively establish that Seirus paid Ventex hundreds of thousands of dollars without obtaining any written promise of exclusivity or anything else. The documents reveal the lengths to which Seirus and Ventex went to avoid creating a discoverable paper trail and thereby conceal an incriminating record from

¹ Last night, Ventex further supplemented its interrogatory response, and produced even more previously withheld Seirus/Ventex communications. (*See* Ex. 2180).

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Columbia and the Board, which suggests that counsel may have been involved in the orchestration and execution of this scheme. The documents illustrate that these payments were a profound departure from their previous course of business. In short, they establish that Seirus and Ventex have engaged in a conspiracy to defraud the Patent Office.

This is a serious precedential matter. For the reasons explained below, the Board should (a) allow a personal deposition of Ventex Vice-President Paul Park, who has played a prominent role in communications regarding the IPR funding scheme; (b) allow additional 30(b)(6) deposition topics of Ventex concerning the scheme; (c) allow limited additional interrogatories concerning the scheme; and (d) authorize service of subpoenas to Seirus.

I. THE SEIRUS/VENTEX IPR FUNDING SCHEME TAKES SHAPE

The documents produced by Ventex only after this tribunal's specific orders show that the IPR funding scheme started sometime in late 2016. In early November, 2016, Seirus transferred [REDACTED] to Ventex for the down payment of what the parties characterized as a "HeatWave Exclusive License Fee." (Exs. 2167, 2168.) Seirus apparently promised to thereafter pay [REDACTED]/yard as a "surcharge" on all fabric orders for the first [REDACTED] yards of fabric, and [REDACTED]/yard for the next [REDACTED] yards of fabric, for a total of [REDACTED] between 2017 and 2018. (Ex. 2169.) Seirus would recoup the [REDACTED] fee advance through a concealed

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█████ "discount" from all subsequent purchase orders. (*Id.*) None of Seirus's purchase orders reflected the █████ "discount" it was receiving. The new documents demonstrate that the scheme was intended to give Ventex an infusion of █████ cash two months before these IPRs were filed, with following payments disguised as a per-yard fee over an extended period of time.

Seirus and Ventex *never reduced the agreement to writing*. Ventex never committed in writing to refrain from selling anything to anyone. The transaction structure is only illuminated through subsequent squabbles between Ventex and Seirus as Ventex demanded more money. (Exs. 2170, 2171.)

The scheme was so complicated that both parties ended up keeping a separate, off-the-record set of books to keep track of the payments. (Exs. 2169, 2172.) Seirus apologized to Ventex, writing, "I understand this is confusing as it is on my end as well with various deductions coming from various deposits and discounts." (Ex. 2170, p. 1.) By November 22, 2017, tracking the scheme had gotten so messy that Seirus ended up revealing and sending Ventex its independent spreadsheet. Ironically, in its supplemental interrogatory response, Ventex's counsel, unable to identify any documentation of the terms of the alleged agreement in Ventex's records, relies on *Seirus's* internal accounting spreadsheet to identify the alleged agreement terms. (Ex. 2180, p. 5, citing Ex. 2169.)

In October 2017, after Seirus had paid about █████ in "License Fee,"

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Ventex suggested that it may need to change the “fee.” (Exs. 2169, 2173.) During confirmations of 2018 fabric prices, Ventex wrote, “Further discussion will be required for ‘HEATWAVE EXCLUSIVE LICENSE FEE’ for 2018.” (Ex. 2173.) This suggests that the terms of any alleged agreement were never actually set, but were rather subject to change as needed. This, of course, would be entirely inconsistent with any agreement for an actual license fee, but consistent with reimbursement of unpredictable counsel fees and litigation costs.

By late 2017, Ventex urgently needed (“We almost die here”) more money from Seirus to pay Covington Burling for legal fees in these IPRs. (Ex. 2174.) In November 2017, Ventex’s Paul Park wrote to Seirus’s Bob Murphy in code, “We hope you to be able to place us more order, because we are still hungry.” (*Id.*, p. 5.) That was followed up on December 3, 2017 with an additional request asking for an “additional order as soon as possible.” (*Id.*, p. 2.) And a week later, with greater urgency, “Please give your additional order as soon as possible. We almost die here . . .” (*Id.*) Mr. Murphy arranged for an order of [REDACTED] yards of fabric. Mr. Park wrote back, “Please be noted that we have got the [REDACTED] yd order last week, but it is absolutely not enough. We need much more order about [REDACTED] yd in this week.” (*Id.*, p. 1.) Another Ventex employee who was copied on the email sent a follow-up email to Mr. Park in the same thread: “COVINGTON is requesting to fix the correct payment date. We need SEIRUS to clear this up as

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soon as possible.” (*Id.*, pp. 1, 6) Mr. Park wrote back, “As you well know . . . I’m feeling pressured.” (*Id.*) *At best*, this suggests that Ventex needed more “license fee” money from Seirus to pay Covington’s legal bills in these IPRs. Ventex has yet to produce its fee billing records from Covington & Burling.

To resolve the fee deficit, the next day, Ventex wrote to Seirus and asked, “Can you please help make advance payment for Heatwave Exclusive License fee” for five purchase orders where payment was not yet due. (Ex. 2175, p. 4.) Seirus promptly agreed to pay over [REDACTED] in a “fee” advance without any documented explanation of this extraordinary request. (*Id.*, p. 2.) At the rate then being paid, this was equivalent to the “fee” on about [REDACTED] yards of fabric.

Similarly, in April 2018, immediately before the final hearing in these cases. Ventex wrote to Seirus asking “[w]ould it be possible to make advanced payment for Heatwave exclusive fee [REDACTED] for PO 416305.” (Ex. 2176.) Seirus’s director, and CFO, Wendy Carey, agreed to advance the [REDACTED] payment, and the money was promptly wired without further inquiry. (*Id.*, Exs. 2177, 2178.)

II. THE COLLUSION CONTINUES TO THIS DAY

On September 27, 2018, the Board granted Columbia’s motion for additional discovery in these cases, reversing its position from a year and a half ago, and allowing Columbia to explore the relationship between Seirus and Ventex. (Paper 73.) *The next business day* (Korea time), Ventex’s Paul Park emailed Seirus’s

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Bob Murphy, "Please call me back as soon as possible." (Ex. 2179.) In response, Mr. Murphy offered to meet in person on October 23, 2018. (*Id.*) Messrs. Murphy and Park were careful to avoid documenting any substance in email. Ventex has admitted that they met to discuss the alleged "License Fee." (Ex. 2180, p. 7.) Not only does the collusion continue to this day, the obfuscation continues as well.

III. COLUMBIA'S REQUESTS FOR ADDITIONAL DISCOVERY

The Board has already granted Columbia's request for a 30(b)(6) deposition of Ventex concerning four topics. (Paper 78, referencing Ex. 2121.) But Columbia only became aware of the IPR funding scheme after those four topics were first requested. Accordingly, Columbia respectfully requests to add three additional topics specific to the IPR funding scheme, as provided in the proposed amended deposition notice. (Ex. 2181 – see new Topics 5-7.)

Ventex has indicated that it will produce Paul Park as its corporate witness. Mr. Park, played a prominent role regarding the scheme. (Exs. 2167, 2170, 2171, 2173, 2174, 2175, 2176, 2179.) Columbia seeks to ensure it can depose Mr. Park in his personal capacity as well. Mr. Park speaks English and, provided he testifies in English, Columbia anticipates a single, 7-hour deposition of Mr. Park, including both his personal and corporate representative testimony, will be sufficient.

Columbia also respectfully requests permission to serve narrow, targeted interrogatories concerning the funding scheme as well as dates and amounts when

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Covington and others sought payment for services in these IPRs. (Ex. 2182.)

Columbia also respectfully requests that the Board authorize subpoenas to Seirus. The document requests to Seirus are narrow in scope, as provided in the draft subpoena. (Ex. 2183.) The deposition subpoenas are directed to a Seirus 30(b)(6) witness concerning the same topics as provided in the Ventex notice, as well as Bob Murphy, to the extent Seirus does not designate him as its corporate representative. (Exs. 2184, 2185.)

IV. EACH OF THE *GARMIN* FACTORS IS SATISFIED

The Board has already recognized that substantial evidence supports additional discovery in this case, granting a 30(b)(6) deposition of Ventex. (Paper 78, p. 7.) The Board has also held that “Columbia is entitled to testimony regarding communications that led to the sudden change in pricing of Ventex products in January 2017.” (*Id.*, p. 5.) The additional proposed deposition topics are narrowly drafted and limited to topics the Board has already addressed.

The additional interrogatories are also warranted. The documents strongly suggest that Seirus's “fee” payments were meant to pay Covington for prosecution of these IPRs. New Interrogatory No. 2 is narrowly tailored to avoid privilege, but to allow Columbia to see if the dates when Seirus paid Ventex align with Covington's bills and increased litigation expenses. Interrogatory No. 3 is the same as already-served Interrogatory No. 1, but addressed to the newly discovered

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“license fee” arrangement. It is appropriate given Ventex’s substantial efforts to avoid documenting any negotiations about the fee. Interrogatory No. 4 merely asks for identification of attorneys involved in the IPR funding scheme, which is relevant at least to claims of privilege.

Finally, the discovery to Seirus also is warranted. The Board’s prior decisions address all Garmin factors except number three. That analysis is equally applicable to the requests to Seirus, which are essentially identical to the Ventex requests. In its supplemental interrogatory response, Ventex admits that it “does not keep logs of non-written communications with . . . Seirus. In addition, many of the employees who initiated and thereafter managed the Seirus business relationship are no longer employed at Ventex.” (Ex. 2180.) Thus, requests to Seirus are the only available means for discovery.

Moreover, document requests alone are clearly insufficient. Ventex and Seirus did everything possible to avoid creating a written record of the scheme. Given Ventex’s repeated withholding of relevant discovery and its admission that it has been unable to identify information responsive to Columbia’s requests, Columbia is unable to generate equivalent information by other means. *Cf. generally, Garmin, Case IPR2012-00001, Paper 26, pp. 6-7.*

V. CONCLUSION

The Board should grant the additional discovery in Exhibits 2181-2185.

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Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

Date: October 25, 2018

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Attorneys for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on the 25th day of October, 2018, a complete and entire copy of **PATENT OWNER'S MOTION FOR ADDITIONAL DISCOVERY** was served on counsel of record by filing this document through the PTAB E2E System, as well as by delivering a copy via electronic mail to the Petitioner's known representatives at the e-mail addresses noted below:

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Respectfully submitted,
SCHWABE, WILLIAMSON &
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By Email

October 4, 2018

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Schwabe, Williamson & Wyatt PC
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Re: IPR2017-00651, IPR2017-00789

Dear Counsel:

Please find enclosed Petitioner Ventex Co., Ltd.'s ("Ventex") document production volume 1 (Ventex-IPR_0000001–24406), which we are serving in response to Patent Owner Columbia Sportswear North America's ("Columbia") Discovery Requests to Petitioner, served October 1, 2018 in the above-referenced IPR proceedings.

Ventex objects to Columbia's discovery requests to the extent they seek information that is subject to the attorney-client privilege, attorney work product immunity, and/or any other privilege or immunity from disclosure. Consistent with the instructions of the requests, the attached privilege log identifies all documents that Ventex has withheld from production.

Otherwise, Ventex's document production includes all non-privileged communications between Seirus and Ventex (without limitation by subject matter) that Ventex located based on a reasonable search of documents within Ventex's possession, custody, or control—including electronic documents stored on Ventex employees' email accounts and computers.

The descriptions in Ventex's privilege log are meant to provide information sufficient to show that the referenced documents are subject to common interest privilege and/or any other privilege or immunity. Through providing this information, Ventex does not waive any privilege or immunity with respect to the contents of the referenced documents. Further, Ventex reserves all rights and privileges under the Federal Rules of Evidence and any other applicable law or rule. The failure to assert any such rights and privileges, or the inadvertent disclosure by Ventex of documents protected by such rights or privileges, shall not constitute a waiver thereof.

COVINGTON

October 4, 2018

Page 2

Ventex's document production is designated "PROTECTIVE ORDER MATERIAL" under the Protective Order agreed to between the parties and applicable to these proceedings, and should be treated as such.

Sincerely,

/David A. Garr/

David A. Garr

COVINGTON

October 4, 2018
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6, I hereby certify that the foregoing Letter Regarding Ventex's Document Production Volume 1 in *Ventex Co., Ltd. v. Columbia Sportswear N. Am., Inc.*, IPR2017-00651, 2017-00789 (PTAB), Ventex's Document Production Volume 1, and Ventex's privilege log dated October 4, 2018 were served by electronic mail today on the following counsel of record for patent owner.

Steven J. Prewitt, SPrewitt@schwabe.com

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Schwabe Williamson & Wyatt

Date: October 4, 2018

/David A. Garr/

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VENTEX CO., LTD.,
Petitioner,

v.

COLUMBIA SPORTSWEAR NORTH AMERICA, INC.,
Patent Owner

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Before JOSIAH C. COCKS, MITCHELL G. WEATHERLY, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

PATENT OWNER'S MOTION FOR SANCTIONS

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Pursuant to 37 C.F.R. § 42.12 and the November 21, 2018 email authorizing this motion, Columbia requests sanctions against Ventex in the form of \$254,599.34 in attorneys' fees and costs incurred since discovery began.

I. INTRODUCTION AND SUMMARY OF RELEVANT FACTS

Ventex concealed and destroyed evidence of the arrangement whereby Seirus began paying hundreds of thousands of dollars to Ventex at the same time that Ventex decided to spend hundreds of thousands of dollars pursuing these IPRs. It then repeatedly committed perjury in an effort to obfuscate both the scheme and its spoliation of evidence regarding this funding arrangement.

Ventex first responded to Columbia's document requests regarding § 315(b) by producing 24,406 pages, most of which were not responsive to Columbia's requests. Ventex told Columbia that this production constituted "all non-privileged communications between Seirus and Ventex (without limitation by subject matter)." (Ex. 2133.) But this was a lie. Ventex had withheld communications with Seirus that discussed the funding arrangement. Only after Columbia discovered the arrangement anyway and brought it to the Board's attention did Ventex produce 2000 pages of previously-concealed communications between Ventex and Seirus directly relevant to the funding arrangement. (Paper 79, p. 1.)

The written Heatwave Exclusive Manufacturing Agreement, which memorialized the funding scheme, was not among those 2,000 pages because Paul

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Park and other Ventex employees had deleted or destroyed every copy of that agreement in Ventex's possession, along with every email and other document that specifically referenced the written agreement. Ventex had also deleted the email accounts of the employees who negotiated the agreement, decided to file the IPRs, and hired Covington. (Paper 135, Observations 10-16.)

Ventex then concealed its destruction of nearly all relevant evidence by serving Columbia with interrogatory responses stating this evidence had never existed. Mr. Park, testifying on behalf of Ventex, did not merely testify that he did not remember any written agreement, he concocted an elaborate explanation invoking allegedly common practices in the Korean textile industry to insist both in his declaration and deposition that no written agreement had ever existed. (Ex. 1091 at ¶¶ 14, 17-18; Ex. 2188 at 63:10-64:9; 77:12-78:15.)

But then Seirus produced the written Heatwave Exclusive Manufacturing Agreement that was executed by Ventex's CEO, and which *designated Mr. Park as the notice party*. (Ex. 2189-2.) Seirus also produced an email from Mr. Park referencing the written agreement, in which Mr. Park *cited specific paragraph numbers within it* while seeking payment from Seirus. (Ex. 2190.) Ventex blamed Mr. Park's memory and claimed that these documents had been innocently deleted by Mr. Park, and in an act of disloyalty by former employee Joori Hwang.

But this was not true either. Ventex was informed of its responsibilities to

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preserve evidence by May of 2017. (Paper 135, Obs. 8-9.) After that, Ms. Hwang, and her supervisor, Seok Keun Jung, left Ventex, and upon their departure, *Ventex itself* deleted their email accounts. It did so knowing that Ms. Hwang managed the Seirus account and negotiated the funding arrangement, and that both she and Mr. Jung were involved in the decision to file the IPRs. (*Id.*, Obs. 10-13.)

II. LEGAL STANDARD

A party moving for sanctions has the burden to show that (i) a party has performed conduct that warrants sanctions; (ii) the moving party has suffered harm from that conduct; and (iii) the sanctions requested are proportionate to the harm suffered by the moving party. *See* 37 C.F.R. § 42.20(c); *RPX Corp. v. Applications in Internet Time, LLC*, IPR2015-01750, slip op. at 2 (PTAB May 6, 2016) (Paper 58) (granting in-part petitioner’s motion for sanctions).

Under 37 C.F.R. § 42.12(a), the “Board may impose a sanction against a party for misconduct.” Such acts of misconduct include “[f]ailure to comply with an applicable rule or order in the proceeding;” “[m]isrepresentation of a fact;” “[a]buse of discovery;” or “[a]ny other improper use of the proceeding, including actions that . . . cause . . . an unnecessary increase in the cost of the proceeding.” 37 C.F.R. § 42.12(a)(1), (3), (5), (7).

III. VENTEX’S CONDUCT JUSTIFIES SANCTIONS

Ventex’s concealment and spoliation of evidence constitute sanctionable

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“failure to comply with an applicable rule or order in the proceeding,” “abuse of discovery” and “improper use of the proceeding, including actions that . . . cause . . . an unnecessary increase in the cost of the proceeding.” 37 C.F.R. § 42.12(a).

A. Ventex Concealed Evidence.

There is no innocent explanation for Ventex’s decision to withhold 2,000 pages of communications about the funding arrangement from its document production while *affirmatively* misrepresenting that production as containing *all* of its communications with Seirus located after a comprehensive search. The decision to try to conceal these documents belies Ventex’s insistence that the funding arrangement had nothing to do with the IPRs, and reflects a calculation that, given the limited discovery typically allowed in IPRs, its efforts to conceal the arrangement from Columbia were likely to be successful.

B. Ventex Destroyed Evidence.

Spoliation is “the willful destruction of evidence or the failure to preserve potential evidence for another’s use in pending or future litigation.” *Trigon Ins. Co. v. U.S.*, 204 F.R.D. 277, 284 (E.D. Va. 2001). Spoliation is a serious offense, as the “destruction of evidence can lead to manifest unfairness and injustice.” *Id.* at 285. Further, spoliation of evidence “increases the risk of an erroneous decision on the merits of the underlying cause of action and can increase the costs of litigation as parties attempt to reconstruct the destroyed evidence.” *Id.*

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To establish a claim of spoliation, two elements must be met: (1) “the adverse party had a duty to preserve the allegedly spoiled [evidence];” and (2) “the [evidence was] intentionally destroyed.” *Id.* at 286. Here, both are met.

First, Ventex had a duty to preserve evidence beginning in October 2016, when it engaged Covington to file these IPRs. (Ex. 2188 at 99-100); *see Supreme Oil Co. v. Lico Brands, Inc.*, 39 U.S.P.Q.2d 1695 (T.T.A.B. 1996) (petitioner spoliated evidence when it destroyed records that it knew or should have known were relevant to patent office cancellation proceeding it had filed); *Taylor v. Mitre Corp.*, 2012 WL 5473715, at *4-5 (E.D. Va. Sept. 10, 2012) (citing *Silvestri v. General Motors Corp.*, 271 F.3d 583, 591 (4th Cir. 2001)).

The duty to preserve evidence extends to “what [the party] knows, or reasonably should know, is relevant in the action, is reasonably calculated to lead to the discovery of admissible evidence, is reasonably likely to be requested during discovery, and/or is the subject of a pending discovery request.” *Taylor*, 2012 WL 5473715, at *4. As Ventex’s production of over 26,000 pages of communications with Seirus in response to Columbia’s requests demonstrates, Ventex knew or reasonably should have known that it had a duty to preserve all documents relating to Seirus. (*See also* Paper 135, Observation 8.)

Second, evidence of the agreement was intentionally destroyed. After Ventex had been informed of its responsibilities to preserve documents, it deleted

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the email accounts of departed employees Joori Hwang, Seok Keun Jung and Kyung Joong Na. When the destruction of evidence was revealed, Ventex insisted that Ms. Hwang engaged in “misconduct” and “deleted her computer” “despite instructions to the contrary.” (Paper 103, p. 1, Ex. 1099, pp. 7, 8.) But it failed to mention that *Ventex itself* deleted her email account along with those of Messrs. Jung and Na. (Paper 135, Observations 10-14.) And Paul Park admitted that *he himself* deleted substantial relevant emails, and that no efforts were made to retrieve any of these deleted emails or files. (*Id.*, Observations 12, 16.)

Ventex also abused discovery by violating the Board’s Order (Paper 73) requiring it to produce “all” relevant documents in its possession on October 4, 2018. The hiding, selective production, and destruction of documents also represent an abuse of discovery. *See Silvestri*, 271 F.3d at 591 (parties have “obligation to give the opposing party notice of . . . the possible destruction of the evidence if the party anticipates litigation involving that evidence”). The spoliation has resulted in an unnecessary increase in the cost of the proceeding.

C. Ventex’s False Statements Made Under Oath Constitute Perjury.

Ventex’s and Paul Park’s acts of perjury also constitute sanctionable “abuse of discovery,” “misrepresentation of a fact” and “actions that . . . cause . . . an unnecessary increase in the cost of the proceeding.” 37 C.F.R. § 42.12(a).

Perjury occurs when a person, “having taken an oath . . . that he will testify,

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declare, depose, or certify truly, or that any written . . . declaration [or] deposition . . . is true, willfully and contrary to such oath states or subscribes any material matter which he does not believe to be true.” 18 U.S.C. § 1621.

Mr. Park’s perjury has been well documented throughout this case (*see, e.g.*, Ex. 2199), and is further documented in Columbia’s observations on cross examination, submitted herewith. (Paper 135.)

IV. VENTEX’S ACTIONS HAVE CAUSED COLUMBIA HARM

Since September 27, 2018, Columbia has spent \$254,599.34 in attorneys’ fees and costs navigating the tangled web that Ventex continues to weave. (Ex. 2213.) Specifically, Columbia has been forced to research, draft, and file numerous briefs and correspondence to the Board and opposing counsel; prepare for and take four depositions of Ventex witnesses; subpoena Seirus; take Seirus’s deposition; and review and analyze tens of thousands of pages of Ventex’s documents and filings in addition to documents produced by Seirus. A substantial portion of this harm is the direct result of Ventex’s discovery abuses in this case.

V. VENTEX’S ACTIONS SHOULD BE SANCTIONED

Columbia requests attorneys’ fees and costs dating back to September 27, 2018, when discovery opened (Paper 73) and the abuses started. This form of sanction is allowed by the Board, *see* 37 C.F.R. § 42.12(b)(6), and is an appropriate punishment to both recompense Columbia and to deter this and other

Petitioners from committing similar offenses in the future.

Trial courts have inherent power and broad discretion to determine an appropriate sanction for spoliation that will “redress conduct which disrupts the judicial process.” *Taylor*, 2012 WL 5473715, at *4. “The degree of culpability and the prejudice suffered by the moving party will guide a Court in its formulation of remedial and punitive action.” *Trigon*, 204 F.R.D. at 286. Such sanctions may include “an assessment of attorney’s fees and costs.” *Taylor*, 2012 WL 5473715, at *4. Courts have also awarded sanctions in the form of attorneys’ fees for perjury and similar misrepresentations made to mislead the court and delay proceedings. *See, e.g., Velocity Micro, Inc. v. Edge Interactive Media, Inc.*, No. 3:08cv135, 2008 WL 4952605, at *5-6 (E.D. Va. Nov. 7, 2008). Thus, attorneys’ fees and costs are an appropriate sanction here.

VI. CONCLUSION

The Board should enter an order that Ventex pay Columbia \$254,599.34, the attorneys’ fees and costs incurred in this case since September 27, 2018. At this time, Columbia seeks only its fees and costs since the discovery abuses began. Such an award would be an appropriate “remedial and punitive” sanction. *Trigon*, 204 F.R.D. at 286. Columbia reserves its right to seek fees and costs since the case commenced, particularly given the wrongful acts between Seirus and Ventex to defraud the Patent Office through the IPR Funding Scheme.

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Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

Date: December 14, 2018

By: /Brenna K. Legaard/

Steven J. Prewitt

Reg. No.: 45,023

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Attorneys for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on the 14th day of December, 2018, a complete and entire copy of **PATENT OWNER'S MOTION FOR SANCTIONS** was served on counsel of record by filing this document through the PTAB E2E System, as well as by delivering a copy via electronic mail to the Petitioner's known representatives at the e-mail addresses noted below:

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Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

By: /Brenna K. Legaard/
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Trials@uspto.gov
571-272-7822

Paper 78
Date: October 18, 2018

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VENTEX CO., LTD.,
Petitioner,

v.

COLUMBIA SPORTSWEAR NORTH AMERICA, INC.,
Patent Owner.

Case IPR2017-00651
Patent No. 8,424,119 B2

Before JOSIAH C. COCKS, MITCHELL G. WEATHERLY, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

COCKS, *Administrative Patent Judge*.

DECISION
Granting-in-Part Motion for Additional Discovery
37 C.F.R. § 42.51(b)(2)

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I. INTRODUCTION

Patent Owner, Columbia Sportswear North America, Inc. (“Columbia”) contends that Petitioner, Ventex Co., Ltd., (“Ventex”) failed to timely file this *inter partes* review because Ventex is in privity with its customer Seirus Innovative Accessories, Inc. (“Seirus”), and Seirus was served with a complaint alleging infringement of U.S. Patent No. 8,424,119 B2 (“the ’119 patent”) more than one year before Petitioner filed the Petition in this action. Paper 27, 51; 35 U.S.C. § 315(b). On July 25, 2018, we extended the deadline to complete this proceeding by up to six months. Paper 65. On September 27, 2018, we granted-in-part Columbia’s motion for additional discovery. Paper 73 (“Dec.”); Paper 69 (“Motion” or “Mot.”).¹ In that Decision, we granted Columbia’s Motion as to Columbia’s document requests and an interrogatory, but denied the Motion as to depositions of Ventex and Seirus. Dec. 9. Regarding the depositions, we found that because of the unknown extent of any Ventex/Seirus communications at the time of our Decision, “it is not apparent from the record whether any deposition of Ventex or Seirus is warranted until after Ventex produces documents and/or an interrogatory response regarding the communications in question.” *Id.* at 7. We ordered Columbia to request a conference call by October 8, 2018, if the documents and information produced by Ventex indicated a need for a deposition. *Id.* at 9. Columbia requested such a conference call on October 8, 2018, and we held the conference on October 16, 2018. On October 15, the day prior to our call, Columbia filed a declaration, a number of exhibits, and sent an email to the

¹ Columbia also filed several exhibits in association with the Motion (Exs. 2121–2123), which include its proposed discovery requests.

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Board summarizing its interpretation of the new information. *See* Exs. 2124–2166.²

II. ANALYSIS

A. Columbia's New Allegations and Requests

Columbia alleges that Ventex's newly-produced documents and interrogatory response justify not only the discovery sought in Columbia's Motion, but also justify additional topics in the Ventex deposition, additional document requests to Seirus, and five additional depositions. According to Columbia's correspondence to the Board, the additional proposed deponents are: (1) Ventex counsel; (2) Mike Carey, President and Chairman of Seirus; (3) Robert Murphy, Vice President of Seirus; (4) Scott DeNike, General Counsel of Seirus; and (5) Chris Marchese, outside counsel for Seirus.³

Ventex argues that Columbia's late filing did not allow Ventex an adequate opportunity to investigate and respond to Columbia's allegations. Ventex seeks a chance to respond to Columbia's allegations via supplemental discovery responses and/or testimony from declarants, to be filed no later than Monday, October 22, 2018. Columbia does not oppose Ventex's request. Ventex also requests that we expunge the declaration filed

² Columbia filed a Motion to Seal a number of these exhibits. Paper 75. The Declaration of Nika Aldrich was filed under seal (Ex. 2165) and as a public, redacted version (Ex. 2166). We will address the Motion to Seal at a later date, along with any additional Motions to Seal that may be necessary due to the additional motions authorized in this Decision.

³ It is not clear whether Columbia still seeks discovery from Seirus as set forth in the Motion, or whether the new requests subsume those requests. *See* Ex. 2122 (subpoena filed in connection with Columbia's Motion that seeks documents and a deposition of Seirus regarding communications between Seirus and Petitioner).

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by Columbia based in part on Columbia's failure to seek authorization for such a filing.

Based on our review of Columbia's recent filings, we agree with Ventex that it is entitled to respond to the new allegations and evidence no later than Monday, October 22, 2018. We also treat Ventex's request to expunge portions of the filing as a request for authorization to file a motion to expunge, which we grant. Although we authorize such a motion, the motion may not be based on Columbia's failure to seek and receive prior authorization for the filing. While Columbia should have sought authorization for such a filing, we are aware that expunging the filing from the record and then in effect authorizing the re-filing of the same or similar material as part of an additional motion for discovery (discussed below) creates unnecessary work and confusion in the record. We consider it premature to address whether the entirety of the papers that Columbia filed on October 15 should remain in the record. Therefore, we limit the scope of the authorized motion to expunge to addressing whether any portion of Columbia's filings on October 15 contain sensitive and/or confidential allegations or evidence that should have been redacted from public view.

As noted above, Columbia's latest filing seeks additional discovery beyond that which it sought as part of the previously filed Motion. We agree with Ventex's suggestion that it should have the chance to respond with additional evidence to Columbia's papers of October 15 before we consider Columbia's requests for more discovery. It is apparent, however, that Columbia's filings of October 15 and the issues raised in the conference call justify our authorization for Columbia to file an additional motion for discovery. We define the scope of our authorization in the Order below.

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We pre-authorize Columbia to move for discovery beyond that which Columbia seeks in its October 15 papers to the extent that Ventex's filing by October 22, 2018, may warrant it.

B. Impact of Columbia's Allegations on Pending Motion for Ventex Rule 30(b)(6) Deposition

The purpose of the conference call was to discuss whether the depositions sought in Columbia's original Motion are now justified based on the documents and information produced by Ventex pursuant to partial grant of Columbia's Motion. Dec. 9. As discussed above, we denied Columbia's Motion in part because the third *Garmin* factor weighed against granting a request for a deposition, when the record lacked sufficient information to indicate that additional information would be gleaned from such a deposition that could not be gleaned from any produced documents. *Id.* at 6–7 (citing *Garmin Int'l, Inc. v. Cuozzo Speed Techs. LLC*, Case IPR2012-00001, 6–7 (PTAB Mar. 5, 2013) (Paper 26)). With respect to the deposition of Ventex, we now view the evidence in the record as sufficient to indicate that the deposition will reveal information that cannot be discovered by Columbia by other means. For example, Ventex's interrogatory response identifies a number of non-written communications between Ventex and Seirus that, due to their non-written nature, will not be described in any detail in the documents produced by Ventex. Ex. 2134, 2–3. In addition, based on Columbia's assertions in its filing and on the telephone conference, we conclude that Columbia is entitled to testimony regarding communications that led to the sudden change in pricing of Ventex products in January 2017, which Columbia credibly alleges to show that, at a minimum, Seirus may have financed Ventex's conduct of these *inter partes* reviews. Testimony

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regarding communications between Ventex and Seirus is likely to reveal facts that are highly probative of the nature of the price increases reflected in, but not fully explained by, the existing documentary evidence. Because the third *Garmin* factor now weighs in favor of a Ventex deposition rather than against it, we grant Columbia's Motion in part as to the Ventex deposition.⁴ Ventex must adequately prepare a witness to provide testimony regarding each of the topics listed in Columbia's Notice of Deposition, and ensure that the witness is aware of all relevant Ventex/Seirus communications falling within the scope of the topics listed in that Notice. *See* Ex. 2121.

We stress that we grant the Motion based on the currently pending Notice of Deposition (Ex. 2121), and do not reach potential additional topics not subsumed within the topics in that Notice. Columbia may only seek any further additional testimony, if authorized in our subsequent consideration of the motion for additional discovery authorized above. The parties should coordinate the logistics of the Ventex deposition so that only one deposition is necessary, and so that the transcript from the deposition can be used in the briefing for the time-bar issue in November.⁵

⁴ As discussed in our Decision, no other *Garmin* factors weigh against granting Columbia's Motion as to the Ventex deposition. Dec. 5–8.

⁵ If Columbia only seeks a deposition on the topics noticed in the current Notice of Deposition (Ex. 2121) and does not move to add additional topics, there will be no need to schedule the deposition after our decision on any additional discovery motion. If Columbia does seek to add additional topics to that deposition, the Board will endeavor to issue its decision by November 2, 2018, to accommodate a potential Ventex deposition the week of November 5, 2018.

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III. CONCLUSION

Based on the foregoing and as set forth in the Order below, we grant Columbia's Motion for Additional Discovery with respect to the Ventex deposition (Ex. 2121), we authorize Columbia's request to file a second motion for additional discovery, we authorize Ventex's request to respond to Columbia's recent filing, and we authorize Ventex's request to file a motion to expunge. We also set forth a briefing schedule for any second motion for additional discovery filed by Columbia.

IV. ORDER

It is ORDERED that Columbia's Motion for Additional Discovery (Paper 69) is *granted* as to the requested Ventex deposition (Ex. 2121);

FURTHER ORDERED that Columbia's request for authorization to file a Motion for Additional Discovery is *granted*, with Columbia's Motion due on or before October 25, 2018, and limited to no more than eight pages, with Ventex's Opposition due on or before October 30, 2018, and limited to no more than eight pages, and with no authorization for a Reply;

FURTHER ORDERED that Ventex's request to respond to Columbia's October 15, 2018, filing is *granted*, and any response, including supplemental discovery responses and/or any explanatory declarations, are due no later than October 22, 2018;

FURTHER ORDERED that Ventex's request for authorization to file a motion to expunge is *granted*, with any such motion due on or before October 30, 2018, and limited to no more than five pages; and

FURTHER ORDERED that the authorized motion to expunge shall only address whether Columbia's filings on October 15 should be expunged

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Patent No. 8,424,119 B2

because those filings contain sensitive and/or confidential allegations or evidence that should be redacted from public view.

PETITIONER:

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PATENT OWNER:

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Burnside, Samantha J.

From: Garr, David <dgarr@cov.com>
Sent: Tuesday, November 13, 2018 3:33 PM
To: Aldrich, Nika F.; Cho, Daniel; Chen, Peter
Cc: Ventex-IPR; Burnside, Samantha J.; Olmstead, Julie A.; Prewitt, Steven J.; Legaard, Brenna K.
Subject: RE: Ventex document production [IWOV-pdx.FID3927110]

Nika,

As noted in my email yesterday, we have produced all non-privileged responsive documents that Ventex identified in searching documents in its possession, custody, or control. We believe those searches were comprehensive and reasonable.

Nonetheless, in light of the documents produced by Seirus last Friday, we visited Ventex's office earlier today, during business hours in Korea. We met directly with the company's CEO, Mr. Go, as well as Mr. Park, to confirm whether any responsive information was overlooked. Ventex undertook supplemental search efforts, with our assistance. Yet, Ventex has not been able to locate any copies of the exclusivity agreement produced by Seirus. Nor has the company been able to locate any additional responsive documents in its possession, custody, or control, based on these supplemental search efforts.

Regards,
Dave

David A. Garr

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From: Aldrich, Nika F. <NAldrich@SCHWABE.com>
Sent: Tuesday, November 13, 2018 2:28 PM
To: Garr, David <dgarr@cov.com>; Cho, Daniel <DWCho@cov.com>; Chen, Peter <pchen@cov.com>
Cc: Ventex-IPR <Ventex-IPR@cov.com>; Burnside, Samantha J. <SBurnside@SCHWABE.com>; Olmstead, Julie A. <JOlmstead@SCHWABE.com>; Prewitt, Steven J. <SPrewitt@SCHWABE.com>; Legaard, Brenna K. <BLegaard@SCHWABE.com>
Subject: RE: Ventex document production [IWOV-pdx.FID3927110]

David,

We did not hear back from you this morning as requested. Please advise when you will be available to meet and confer today.

Thanks,

Schwabe Williamson & Wyatt

Nika F. Aldrich

Shareholder

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From: Garr, David <dgarr@cov.com>

Sent: Monday, November 12, 2018 6:09 PM

To: Aldrich, Nika F. <NAldrich@SCHWABE.com>; Cho, Daniel <DWCho@cov.com>; Chen, Peter <pchen@cov.com>

Cc: Ventex-IPR <Ventex-IPR@cov.com>; Burnside, Samantha J. <SBurnside@SCHWABE.com>; Olmstead, Julie A.

<JOlmstead@SCHWABE.com>; Prewitt, Steven J. <SPrewitt@SCHWABE.com>; Legaard, Brenna K.

<BLegaard@SCHWABE.com>

Subject: RE: Ventex document production [IWOV-pdx.FID3927110]

Counsel,

We also noticed that Seirus's production includes documents relating to the exclusivity agreement that Ventex has been unable to locate in its own files. We are raising this with our client tonight, during business hours in Korea.

To be clear, at this point we have produced all responsive documents that Ventex identified in searching documents in its possession, custody, or control (except for the handful of documents identified on our privilege log, and withheld on that basis). To the extent that we are able to locate any additional responsive documents, based on what we have now seen in Seirus's production, we will produce them ASAP.

Regards,

Dave

David A. Garr

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From: Aldrich, Nika F. <NAldrich@SCHWABE.com>

Sent: Monday, November 12, 2018 3:59 PM

To: Cho, Daniel <DWCho@cov.com>; Garr, David <dgarr@cov.com>; Chen, Peter <pchen@cov.com>

Cc: Ventex-IPR <Ventex-IPR@cov.com>; Burnside, Samantha J. <SBurnside@SCHWABE.com>; Olmstead, Julie A.

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Ventex Co. Ltd. v. Columbia Sportswear North America, Inc.

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Exhibit 8

Page 2 of 3

<JOlmstead@SCHWABE.com>; Prewitt, Steven J. <SPrewitt@SCHWABE.com>; Legaard, Brenna K. <BLegaard@SCHWABE.com>

Subject: Ventex document production [IWOV-pdx.FID3927110]

Counsel,

We received Seirus's production on Friday. Needless to say, it is abundantly clear that Ventex has failed to produce all responsive documents that have been requested, and has failed to produce all documents relevant to the "Exclusivity Fee." Please confirm by 9am tomorrow morning that Ventex will produce all such documents by close of business tomorrow or advise a time tomorrow morning for a meet and confer in advance of an urgent motion to be filed before the PTAB.

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571-272-7822

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VENTEX CO., LTD.,
Petitioner,

v.

COLUMBIA SPORTSWEAR NORTH AMERICA, INC.,
Patent Owner

IPR2017-00651
Patent 8,424,119 B2

Before JOSIAH C. COCKS, MITCHELL G. WEATHERLY, and
RICHARD H. MARSCHALL, *Administrative Patent Judges*.

**PATENT OWNER'S REPLY REGARDING
MOTION FOR SANCTIONS**

Patent Owner's Reply Regarding
Motion for Sanctions

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There is no dispute that Ventex deleted relevant emails and other documents after it understood that it had a duty to preserve evidence, and that it provided substantial false testimony in sworn statements. Even after Ventex was informed by its counsel that it had a duty to preserve all evidence relating to the IPRs, it took no measures whatsoever to ensure that emails were preserved when key employees left, and actually instructed its email service provider to delete their accounts until “records [] were no longer available.” (Paper 135, Obs. Nos. 8-9; Ex. 2220, 21:21-22:2.) It is also undisputed that every last Ventex copy of the exclusivity agreement, including the executed hard copy, and Ventex’s internal cover sheet with the signature of every Ventex employee who reviewed it, have vanished.

Ventex’s novel theory that it was “not clearly required” to preserve evidence regarding its relationship with Seirus prior to *AIT* is simply wrong. *All* relevant evidence must be retained, and evidence regarding the nature of its relationship with Seirus was *always relevant* to §315(b). Ventex itself argued that *AIT* did not change the RPI standard. (Paper 71, p. 2). Ventex nonetheless asserts that because discovery in IPR proceedings is statutorily limited, to the extent parties to an IPR have any duty to preserve evidence, that duty is similarly limited.

Ventex’s argument threatens the very integrity of the IPR system. Because discovery is limited, the Board is reliant on the parties’ observance of their “duty of candor in relation to relevant information that is inconsistent with a position advanced by the petitioner during the proceeding.” *Western Digital Corp. v. SPEX*

Patent Owner's Reply Regarding
Motion for Sanctions

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Techs. Inc., Case IPR2018-00082, 00084 slip op. 9-10 (PTAB April 25, 2018)

(Inform.) The duty requires such information to be produced. *Id.*; 37 C.F.R. § 42.51(b)(iii). If there is no duty to preserve potentially relevant evidence, or if that duty is not imposed until IPR proceedings are well underway, the duty of candor is eviscerated. Parties will simply destroy evidence they do not wish to disclose.

Thus, it is precisely *because* discovery in IPRs is so limited that it is critical that the Board take this opportunity to expressly reject Ventex's arguments and make it clear that parties have a duty to preserve potentially relevant evidence, that said duty arises as soon as they retain counsel, and that the Board will enforce that duty. These principles are well-supported by governing case law. (*See* authorities cited in Paper 136, p. 5)

The rest of Ventex's opposition is devoted to a litany of unavailing excuses. While it is undisputed that Ventex *itself* deleted Ms. Hwang's emails (Paper 135, Obs. 10-11), Ventex nonetheless blames Ms. Hwang. But nothing Ms. Hwang may have done excuses *Ventex's* conduct. Ventex argues that the deleted information can be pieced together from other sources, but how do we know? No witness at Ventex is willing to confess personal knowledge regarding the most pertinent facts about the funding scheme or the content of the deleted documents, which includes internal Ventex communications that Seirus never possessed.

Moreover, the lies continue, unabated. In its brief, Ventex states that Mr. Park had "memory lapses" and that he "promptly corrected his errors." But at his

Patent Owner's Reply Regarding
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most recent deposition, Mr. Park insisted, notwithstanding abundant evidence to the contrary, that he *never* had knowledge that there was a written agreement, even when he emailed Seirus about it. (Paper 135, Obs. 4; Ex. 2220, 13:20-20:16.) If he never knew about the written agreement, he had no “memory lapse;” if he did know about the agreement, he lied. Either way, Ventex is not being candid.

Ventex argues that Columbia is limited to the fees it expended deposing Mr. Park and Dr. Go. But Ventex's argument ignores how much more difficult it was for Columbia to arrive at the truth as a result of Ventex's obfuscations. Things would have been very different had the agreement and all supporting documents been produced on October 4. Instead, Columbia had to infer the existence of the agreement from cryptic lines on purchase orders, while Ventex withheld 2,000 pages of highly relevant documents, and the most critical documents had been destroyed. Ventex is wrong that Columbia's harms are limited to time spent after the actual agreement was produced by a third party. Columbia spent *two months* of discovery chasing false facts. And it almost worked—Ventex very nearly succeeded in concealing the funding scheme from Columbia and the Board.

Sanctions are not merely remedial, as Ventex asserts. They are assessed both punitively and as a deterrence to dissuade others from engaging in similar wrongful acts. (*See* Paper 136, p. 8.) Ventex does not assert that Columbia's legal expenses since September are unreasonable. The Board should sanction Ventex to the extent of the fees and costs Columbia has incurred since discovery began.

Patent Owner's Reply Regarding
Motion for Sanctions

IPR2017-00651
Patent 8,424,119

Respectfully submitted,
SCHWABE, WILLIAMSON & WYATT, P.C.

Date: December 28, 2018

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Attorneys for Patent Owner

CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on the 28th day of December, 2018, a complete and entire copy of **PATENT OWNER'S REPLY REGARDING MOTION FOR SANCTIONS** was served on counsel of record by filing this document through the PTAB E2E System, as well as by delivering a copy via electronic mail to the Petitioner's known representatives at the e-mail addresses noted below:

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Respectfully submitted,
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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VENTEX CO., LTD.,
Petitioner,

v.

COLUMBIA SPORTSWEAR NORTH AMERICA, INC.,
Patent Owner

IPR2017-00651
Patent 8,424,119

PATENT OWNER'S OPENING BRIEF
VENTEX IS TIME BARRED PURSUANT TO 35 U.S.C. §315(b)

Patent Owner's Opening Brief
Under 35 U.S.C. §315(b)

IPR2017-00651
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Petitioner, Ventex Co., Ltd., is time-barred from pursuing this IPR pursuant to 35 U.S.C. § 315(b). Specifically, Seirus Innovative Accessories, Inc., Ventex's customer, is both in privity with Ventex and is a real party in interest in these proceedings, and was served with a complaint alleging infringement of the '119 Patent several years before the Petition was filed. Furthermore, the Petition is defective pursuant to 35 U.S.C. § 112(a)(2) because it fails to identify Seirus as a real party in interest. For each of these reasons, the Board, in its final written decision, should issue judgment pursuant to 37 C.F.R. 42.73 that the Petition is time barred pursuant to 35 U.S.C. § 315(b).

In support of this brief, Columbia relies on the substantial record that has already been developed since discovery began anew on this issue, including the Declaration of Nika Aldrich (Exhibit 2165), the Motion for Additional Discovery (Paper 79), and all exhibits submitted in support thereof. Columbia also relies on the Declarations of Serena Morones (Exhibit 2200), Matthew Hoferlin (Exhibit 2201), Steven Prewitt (Exhibit 2202), and Nika Aldrich (Exhibit 2203) submitted concurrently herewith.

LEGAL STANDARD

“Determining whether a non-party is a ‘real party in interest’ demands a flexible approach that takes into account both equitable and practical considerations, with an eye toward determining whether the non-party [1] is a clear

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beneficiary that [2] has a preexisting, established relationship with the petitioner.”

Applications in Internet Time, LLC v. RPX Corp., 897 F.3d 1336, 1351 (Fed. Cir. 2018) (“*AIT*”). A non-party is a clear beneficiary where it “will benefit from the redress that the chosen tribunal might provide,”—i.e., “having [the challenged patent] claims canceled or invalidated.” *Id.* at 1348, 1349. The *AIT* two-part test for real party in interest has been established as the governing law. *See, e.g., Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1246 (Fed. Cir. 2018); *Sirius XM Radio, Inc. v. Fraunhofer-Gesellschaft Zur Forderung der Angewandten Forschung E.V.*, IPR2018-00681, 2018 Pat. App. LEXIS 8292 (Sept. 21, 2018).

“Privity,” as that term is used in 35 U.S.C. § 315(b), exists where “the petitioner is simply serving as a proxy to allow another party to litigate the patent validity question that the other party raised in an earlier-filed litigation.”

WesternGeco LLC v. ION Geophysical Corp., 889 F.3d 1308, 1319 (Fed. Cir. 2018) (citing *Taylor v. Sturgell*, 553 U.S. 880, 895 (2008)), for example, “where the nonparty to an earlier litigation acts as a proxy for the named party to relitigate the same issues.” *Taylor*, 553 U.S. at 895.

Ventex bears the ultimate burden of persuasion to show that its petitions are not time-barred under § 315(b), and thus bears the burden of proving that Seirus is neither its privy nor a real party in interest. *AIT*, 897 F.3d at 1356; *Bungie*, 903 F.3d at 1242.

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SEIRUS IS A REAL PARTY IN INTEREST

The Federal Circuit's two-part test is succinct and easily applied here.

Seirus is a “clear beneficiary in these proceedings.” *AIT*, 897 F.3d at 1351. Seirus had been sued for infringement of these very patents as early as 2014, and at the time of filing of the petitions, Seirus was on the eve of an infringement trial in which it had raised invalidity as a defense. Seirus had everything to gain—more, in fact, than Ventex—from a patent office determination of invalidity. Moreover, Ventex *knew* that Seirus was a clear beneficiary. (Ex. 2188, 94:21-95:10 & 96:17-23.) As early as 2013, Ventex helped Seirus in efforts to develop an invalidity position. (*See, e.g.*, Ex. 2034.)

Moreover, after Ventex filed these proceedings, Ventex conditioned its settlement proposal upon Columbia's abandonment of its infringement suit against Seirus. On December 22, 2017, the parties spoke at Ventex's invitation to discuss a settlement proposal. Surprisingly to Columbia, one of Ventex's material settlement terms required Columbia to drop its lawsuit against Seirus, which had by then been tried to a jury and was pending appeal. (Ex. 2202.) *See Sirius XM*, IPR2018-00681, 2018 Pat. App. LEXIS 8292, at *8 (nonparty that “participated in settlement negotiations and made settlement payments” was a real party in interest). There can be no dispute that Seirus was a clear beneficiary in these IPRs.

For the second factor, Seirus had “a preexisting, established relationship

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with the petitioner” at the time of filing. *AIT*, 897 F.3d at 1351. Ventex had been Seirus’s supplier for the accused fabric since 2013. The parties entered into detailed, written Vendor agreements with each other in relation to the provision of that fabric (Ex. 2009, Ex. 2188, 79:14-23), and Seirus issued purchase orders to Ventex for that fabric on a recurring basis over those several years. (Exs. 2125-2126, Ex. 2188 at Ex. 3.) Thus, there is no dispute that the parties had a “preexisting, established relationship.” The Federal Circuit’s test in *AIT* requires nothing more. 897 F.3d at 1351. Seirus is a real party in interest in these IPRs.

But to the extent there is any doubt, Ventex established that Seirus is a real party in interest by claiming that its communications with Seirus concerning these IPRs are subject to the “common interest privilege.” On October 4, 2018, in response to Columbia’s request for the production of documents, Ventex produced a privilege log listing numerous email communications between Seirus’s counsel and Ventex’s counsel starting in 2015. (Ex. 2135.) Ventex withheld each of these communications from production on account of “Common Interest Privilege.” Likewise, in its response to Columbia’s Interrogatory No. 1, Ventex identified a significant number of non-written communications between Ventex and Seirus concerning the subject matter of these IPRs. (Ex. 2187-3.) Ventex stated that “all of [these communications] are subject to the common interest privilege.” (*Id.* p. 2.)

“Rather than a separate privilege, the ‘common interest’ . . . rule is an

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exception to ordinary waiver rules designed to allow attorneys for different clients pursuing a common legal strategy to communicate with each other. However, a shared desire to see the same outcome in a legal matter is insufficient to bring a communication between two parties within this exception. Instead, the parties must make the communication in pursuit of a joint strategy in accordance with some form of agreement—whether written or unwritten.” *Pac Pictures Corp. v United States Dist. Court.*, 679 F.3d 1121, 1139-30 (9th Cir. 2012) (quotes, cites omitted, emphasis added). The privilege only applies where “the specific communications at issue were designed to facilitate a common legal interest; a business or commercial interest will not suffice. The privilege arises out of the need for a common legal defense, as opposed merely to a common problem.” *Minebea Co. v. Papst*, 228 F.R.D. 13, 16 (D.C. Cir. 2005) (quotes, cites omitted, emphasis added). Thus, the concepts of “real party in interest” and “common interest privilege” are inherently linked. One cannot sustain a common interest privilege with an entity that is not a real party with the same interest in the proceedings. Indeed, in *Cisco Sys., Inc. v. Hewlett Packard Enter. Co.*, IPR2017-01933, 2018 WL 1364821 (P.T.A.B. Mar. 16, 2018), the PTAB denied a petition on real party in interest grounds after noting that the common interest doctrine had been invoked with respect to the unnamed non-party. In hiding its Seirus communications about these proceedings behind a “common interest privilege,”

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Ventex admitted that Seirus is a real party in interest.

For each of these reasons, Seirus is a real party in interest in these proceedings. Ventex cannot satisfy its burden of proving otherwise.

SEIRUS AND VENTEX ARE IN PRIVITY

In prior briefing, Columbia has shown that, by operation of Seirus's Vendor Manual and California law, Ventex had the opportunity to control the Seirus litigation. (Papers 9, 27.) Since then, the Federal Circuit has established that the Board's interpretation of privity, looking to "control" over the other action, was too narrow. The Court explained that "serving as a proxy to allow another party to litigate the patent validity question that the other party raised in an earlier-filed litigation," among other factors, is sufficient to establish privity. *WesternGeco*, 889 F.3d at 1319. The established record, of which the Board is already familiar, shows that Seirus has paid for these IPRs, using Ventex as its proxy.

In October of 2016, the same month Ventex retained Covington to begin preparing the Petition, Seirus wired [REDACTED] to Ventex as a "deposit." (Ex. 2190.) Then, as the IPRs were filed, Seirus began paying Ventex [REDACTED]/yard as either a "Surcharge" or a "License fee" for [REDACTED]/yard fabric (a [REDACTED] upcharge). (Ex. 2125.) In the first year alone—when the bulk of the work on the IPRs would occur, Seirus agreed to pay both the [REDACTED] advance and [REDACTED] in surcharges. (Ex. 2189.) Thereafter, Seirus agreed to continue paying [REDACTED] per yard for another

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█ yards of fabric. *Id.* Ventex then concealed this scheme from Columbia.

When the Board ordered Ventex to produce documents, Ventex apparently destroyed all evidence of the scheme, including internal emails, emails with Seirus, notes, and drafts, not to mention the half-million-dollar contract itself. (Ex. 2191.)

When Columbia discovered the scheme anyway and brought it to the Board's attention, Ventex responded by claiming that Seirus was paying Ventex for "exclusivity," and it purported to explain this exclusivity agreement first with interrogatory answers verified by Paul Park (Ex. 2187), then with a declaration from Mr. Park (Ex. 1091), and finally with testimony from Mr. Park. (Ex. 2188.) But documents and testimony from Seirus have contradicted nearly every aspect of Mr. Park's testimony. (Ex. 2203.)

Ventex justified its failure to turn over any communications about the alleged exclusivity agreement or any written agreement by insisting that none existed. Mr. Park provided the Board with an elaborate explanation that written agreements are not conventionally used in the Korean garment industry. (Ex 1091 ¶¶ 14 & 17-18.) But then Seirus produced a contract executed by Ventex's president that listed Mr. Park himself as the notice party, and it produced emails to and from Mr. Park regarding the agreement. (Exs. 2189, 2190.) Ventex's explanation: Mr. Park has a bad memory.

Seirus's testimony and the documents it produced, including the written

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contract, squarely contradict Ventex's testimony regarding nearly every term of the alleged agreement, from its scope to its duration. The only thing Seirus and Ventex agreed on was Seirus's obligation to pay Ventex hundreds of thousands of dollars during the duration of these IPRs with a [REDACTED] deposit as the work began. These contradictions are summarized in the Aldrich Decl., Ex. 2203.

The substance of the transaction was not a conferral of exclusivity to Seirus. The substance of the transaction was Seirus's payment to Ventex of [REDACTED] with a [REDACTED] advance, which Ventex used to pay for the IPRs.

The timing and amounts of payments made by Seirus align closely with the amounts owed and fees paid to Covington. (Ex. 2200 ¶¶ 33-46.) Not only did Seirus advance [REDACTED] to Seirus shortly before Ventex first paid Covington, but Seirus continued to advance surcharge fees to Ventex. On three separate occasions when Ventex was in significant arrears to Covington, Ventex urgently sought advance payments from Seirus—not on fabric, but on the surcharge fee—in amounts that coincided with the overdue legal bills. In total, Seirus advanced [REDACTED] worth of surcharge fees to Ventex at critical times, even though product was not scheduled to ship for months. (*Id.* ¶ 13.)

Eliminating all doubt, Ventex's correspondence with Seirus directly link these payments to Ventex's legal fees for these IPRs. In December 2017 as the pool of "surcharge fee" to pay for these IPRs was nearly depleted, Mr. Park begged

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for a large order from Seirus that would have amounted to a surcharge of

██████████—almost exactly the amount then overdue from Ventex to Covington. On the frantic email to Seirus, Mr. Park copied his manager, who then privately responded to Mr. Park: “Covington wants us to provide a specific fixed date of payment. We need to resolve things with Seirus as soon as possible.” Mr. Park responded: “As you well know, We are urging them [Seirus] right now.” (Ex. 2200 ¶¶ 44-46, Ex. 1095.) Asked whether it was a “coincidence that the amount of money that you requested from Seirus in the form of an advance payment on the exclusivity fee is almost exactly the same as the amount of money that was owed to Covington as of that same date?” Mr. Park responded: “I don’t believe it to be a coincidence” (Ex. 2188, 159:20-160:18.)

Seirus did not acquire exclusivity through this arrangement—it in fact already had exclusivity. Ventex had already signed away its right to sell anything to any of Seirus’s competitors. The supplier agreement the parties entered into in 2013 ██████████ contained a noncompetition clause forbidding Ventex from selling anything to competitors of Seirus. (*E.g.*, Ex. 2009-3 § (h).) Ventex signed them all for no additional compensation whatsoever, and Seirus testified that ██████████. (Ex. 2203 ¶ 11.) Why would Seirus have paid ██████████ for “exclusivity” when Ventex had given up its right to sell anything to Seirus’s competitors for free?

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And an exclusivity agreement with Ventex could not keep any Seirus competitors out of the market in any event. (Ex. 2201 ¶ 11.) [REDACTED]

[REDACTED] (Ex. 2188, 17:6-24.) Seirus itself testified that [REDACTED]

[REDACTED] (Ex. 2203 ¶ 35-36; *see also* Ex. 2201 ¶¶ 11-12.) Thus, the supposed exclusivity agreement did not provide any meaningful exclusivity to Seirus at all. In fact, other gloves with MegaHeat RX fabric from Seirus's competitors are available for sale in the United States to this day. (Ex. 2203 ¶¶ 16-19.)

Commercially rational actors do not pay hundreds of thousands of dollars for "exclusivity" unless they expect exclusivity to yield increased profits or revenues. But Seirus obtained no identifiable benefits from its "exclusivity" agreement with Ventex. Seirus never [REDACTED]

[REDACTED]
Seirus's corporate representative [REDACTED]
[REDACTED]. (Ex. 2200 ¶¶ 10, 48.) These and other reasons why this agreement made no sense as a purported exclusivity agreement are explained at length by Serena Morones. (Ex. 2200.) The "exclusivity" fee was a payment so that Ventex could act as Seirus's proxy and pursue these IPRs on Seirus's behalf.

The Board should find in its final written decision that Seirus was in privity with Ventex, and a real party in interest in these proceedings.

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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on the 19th day of November, 2018, a complete and entire copy of **PATENT OWNER'S OPENING BRIEF UNDER 35 U.S.C. §315(b)** was served on counsel of record by filing this document through the PTAB E2E System, as well as by delivering a copy via electronic mail to the Petitioner's known representatives at the e-mail addresses noted below:

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UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

VENTEX CO., LTD.,
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COLUMBIA SPORTSWEAR NORTH AMERICA, INC.,
Patent Owner

IPR2017-00651
Patent 8,424,119

**PATENT OWNER'S RESPONSE IN OPPOSITION TO PETITIONER'S
OPENING BRIEF REGARDING
TIME-BAR ISSUES UNDER 35 U.S.C. §315(b)**

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Ventex cannot meet its burden.

Ventex bears the burden of proving that Seirus is neither a real party in interest nor its privy. *Worlds Inc. v. Bungie, Inc.*, 903 F.3d 1237, 1246 (Fed. Cir. 2018). It cannot do so with attorney argument, as attorney argument is not evidence. *Id.* To carry its burden, it must rely on competent *evidence* such as reliable testimony from those with personal knowledge of relevant facts.

Ventex cannot offer any competent evidence regarding its participation in or control over the Seirus litigation, Seirus's involvement with the IPRs, or Ventex's motivation to file the IPRs because, by Ventex's own admission, ***there is no one at the company who has any personal knowledge of any of these events.*** And given Ventex's own admissions regarding its destruction of emails and business records (Ex. 2191), the absence of documentary evidence is meaningless.

Ventex has relied on the testimony of only two employees—Paul Park and Ventex President Kyung-Chan Go. Neither has testified to having any personal knowledge regarding the decision to pursue these IPRs, the Seirus Litigation, or the negotiation of the Exclusive Manufacturing Agreement that underlies the IPR Funding Scheme. (Ex. 1100 ¶¶ 6-7, Ex. 2188, 56:13-57:7.) Paul Park insisted throughout his deposition that [REDACTED]

[REDACTED]

[REDACTED] (Ex. 2188, 66:1-14) [REDACTED]

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[REDACTED] (*Id.* 57:8-60:10.) In preparing to testify as
Ventex's corporate representative, he chose [REDACTED]

[REDACTED] (*Id.* 11:9-12:24, 57:2-7.)

Ventex also relies entirely on Mr. Park for corporate testimony concerning Ventex's alleged reasons for filing the IPRs. (Paper 103, p. 4 (citing Ex. 2188 *passim*)). But Mr. Park admitted that he has no personal knowledge about those decisions. (Ex. 2188, 99:13-100:4.) And in any event, none of Mr. Park's testimony is reliable given his history of repeated false testimony. (Ex. 2199.) A witness's "false testimony . . . directly calls into question the veracity of the rest of his statements." *United States v. Wallach*, 935 F.2d 445, 458 (2d Cir. 1991).

Ventex also cites to the deposition testimony of Robert Murphy, Seirus's corporate deponent, who testified that [REDACTED]

[REDACTED] But Mr. Murphy was unable to testify about others within his company. He testified that [REDACTED]

[REDACTED]
[REDACTED] (Ex. 2198, 8:22-9:4.) Mr. Murphy also did not [REDACTED]

[REDACTED] (*id.* 8:15-21), [REDACTED]

[REDACTED] (Ex. 2180-4.) Therefore, Mr. Murphy was in no position to know whether Seirus and Ventex had

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communicated regarding the IPRs, the Seirus Litigation, Columbia, or the patents.

And Mr. Murphy's testimony contradicted both prior testimony he gave (Ex. 2203, p. 3 ¶¶ 5 & n.1), and established facts in this case. (*Compare* Ex. 2198, 14:10-14 *with* Ex. 2188 at Ex. 3.) Given these limitations, Mr. Murphy's self-serving testimony on these subjects is entitled to no weight.

As Ventex only offers testimony from witnesses who have disavowed knowledge of material facts, are unreliable, or both, and given Ventex's admitted spoliation of highly relevant documents, Ventex cannot carry its burden of showing that Seirus is not its privy or a real party in interest.

Ventex's story makes even less sense every time Ventex tries to explain it.

Ventex contends that Seirus was not a real party in interest because Ventex had its own interest in challenging the validity of Columbia's patents. But as the *AIT* court explained, whether **Ventex** had its own interest is immaterial. The question is whether **Seirus** was a real party in interest. And Ventex's argument that Seirus had no interest in a proceeding for challenging the validity of patents that Seirus had been sued for infringing defies both law and common sense.

Moreover, Ventex's assertion that it had its own interest in invalidating the patents reads like a *post hoc* attempt to rationalize what this Board has already characterized as a "credible alleg[ation] that, at minimum, Seirus may have financed Ventex's conduct of these *inter partes* reviews." (Paper 78, p. 5.) But as

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frequently happens with *post hoc* rationalizations, facts and reality get in the way.

As Ventex tells it (through Mr. Park), Ventex wanted to sell MegaHeat RX to [REDACTED]. But it concluded that Columbia's patents stood in the way of its plans, and decided to invest in these proceedings to invalidate Columbia's patents. But at the very same time, it entered into an agreement with Seirus that *prohibited* it from selling that fabric to anyone other than Seirus. In other words, Ventex is asking the Board to believe that in order to sell its reflective fabric to other customers, Ventex made a rational business decision to spend [REDACTED] in an attempt to invalidate Columbia's patents, while simultaneously entering into an *exclusivity agreement* with Seirus by which *it gave up the right to sell that fabric to any other customer*. The rationale is beguiling to say the least.

In support, Ventex relies on a single internal email alleging without proof that [REDACTED]. (Ex. 1106.) But that email was *after* Ventex had retained Covington to file the IPRs, so could not possibly have been part of Ventex's rationale. (See Ex. 2187 p. 9 (legal fees in Nov. 2016).)

Furthermore, the math in Ventex's new story makes no sense. While Seirus did agree to purchase [REDACTED] yards of fabric over [REDACTED] years, at Seirus's average price of [REDACTED] per yard (Ex. 2200 ¶ 15) plus [REDACTED] in surcharges, the deal was worth about [REDACTED] *over* [REDACTED] years. But that is less than the [REDACTED] [REDACTED] Ventex had received from [REDACTED] alone *in one year*: 2016, when Ventex allegedly

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made this decision. (Ex. 2188 at Ex. 3, p. 2.) There is no rational business reason why Ventex would have given up the right to sell to [REDACTED], [REDACTED], and all other customers and potential customers for a [REDACTED], [REDACTED]-year exclusivity deal with Seirus, nor has Ventex identified one.

There is also no rational business reason why Seirus would pay Ventex [REDACTED] for “exclusivity” it already had. (Ex. 2200.) Moreover, Seirus has been unable to provide consistent testimony about the “exclusivity” it has allegedly enjoyed. [REDACTED] Ventex pointed to an alleged 2013 agreement to buttress their explanation for the 2016 agreement, but in depositions, Ventex and Seirus contradicted each other and themselves regarding what the alleged 2013 agreement even covered, and neither party abided by it anyway. (Ex. 2203 ¶¶ 3-19.)

The only rational conclusion is that the 2016 agreement was never about “exclusivity.” Neither Seirus nor Ventex can testify consistently, accurately, or credibly to the value, existence, scope, or terms of their alleged exclusivity (*id.* ¶¶ 3-34) because neither has ever actually cared about exclusivity. (*Id.* ¶¶ 14-19.)

Ventex has proffered nothing more than the tangled web it has woven.

The more “facts” and explanations Ventex adds, the less sense its story makes. The only reason for the 2016 agreement was to provide a mechanism for Seirus to pay for the IPRs with Ventex as its proxy—making Seirus both Ventex’s privy and reaffirming that it is a real party in interest in these proceedings.

Patent Owner's Opening Brief
Under 35 U.S.C. §315(b)

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Respectfully submitted,
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CERTIFICATE OF SERVICE

Pursuant to 37 C.F.R. § 42.6(e), the undersigned certifies that on the 28th day of November, 2018, a complete and entire copy of **PATENT OWNER'S RESPONSE IN OPPOSITION TO PETITIONER'S OPENING BRIEF REGARDING TIME-BAR ISSUES UNDER 35 U.S.C. §315(b)** was served on counsel of record by filing this document through the PTAB E2E System, as well as by delivering a copy via electronic mail to the Petitioner's known representatives at the e-mail addresses noted below:

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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

COLUMBIA SPORTSWEAR NORTH AMERICA, INC., an Oregon corporation

(b) County of Residence of First Listed Plaintiff Washington County
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

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DEFENDANTS

SEIRUS INNOVATIVE ACCESSORIES, INC., VENTEX, CO., LTD.
MICHAEL J. CAREY, WENDY M. CAREY, ROBERT (BOB) MURPHY,
KYUNG-CHAN GO, MAN-SIK (PAUL) PARK, & John Doe Nos. 1-5

County of Residence of First Listed Defendant _____
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff
- ☒ 3 Federal Question (U.S. Government Not a Party)
- ☐ 2 U.S. Government Defendant
- ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- | | PTF | DEF | | PTF | DEF |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | <input type="checkbox"/> 1 | <input type="checkbox"/> 1 | Incorporated or Principal Place of Business In This State | <input type="checkbox"/> 4 | <input type="checkbox"/> 4 |
| Citizen of Another State | <input type="checkbox"/> 2 | <input type="checkbox"/> 2 | Incorporated and Principal Place of Business In Another State | <input type="checkbox"/> 5 | <input type="checkbox"/> 5 |
| Citizen or Subject of a Foreign Country | <input type="checkbox"/> 3 | <input type="checkbox"/> 3 | Foreign Nation | <input type="checkbox"/> 6 | <input type="checkbox"/> 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: [Nature of Suit Code Descriptions.](#)

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
<input type="checkbox"/> 110 Insurance <input type="checkbox"/> 120 Marine <input type="checkbox"/> 130 Miller Act <input type="checkbox"/> 140 Negotiable Instrument <input type="checkbox"/> 150 Recovery of Overpayment & Enforcement of Judgment <input type="checkbox"/> 151 Medicare Act <input type="checkbox"/> 152 Recovery of Defaulted Student Loans (Excludes Veterans) <input type="checkbox"/> 153 Recovery of Overpayment of Veteran's Benefits <input type="checkbox"/> 160 Stockholders' Suits <input type="checkbox"/> 190 Other Contract <input type="checkbox"/> 195 Contract Product Liability <input type="checkbox"/> 196 Franchise	PERSONAL INJURY <input type="checkbox"/> 310 Airplane <input type="checkbox"/> 315 Airplane Product Liability <input type="checkbox"/> 320 Assault, Libel & Slander <input type="checkbox"/> 330 Federal Employers' Liability <input type="checkbox"/> 340 Marine <input type="checkbox"/> 345 Marine Product Liability <input type="checkbox"/> 350 Motor Vehicle <input type="checkbox"/> 355 Motor Vehicle Product Liability <input type="checkbox"/> 360 Other Personal Injury <input type="checkbox"/> 362 Personal Injury - Medical Malpractice	<input type="checkbox"/> 365 Personal Injury - Product Liability <input type="checkbox"/> 367 Health Care/Pharmaceutical Personal Injury Product Liability <input type="checkbox"/> 368 Asbestos Personal Injury Product Liability PERSONAL PROPERTY <input type="checkbox"/> 370 Other Fraud <input type="checkbox"/> 371 Truth in Lending <input type="checkbox"/> 380 Other Personal Property Damage <input type="checkbox"/> 385 Property Damage Product Liability	<input type="checkbox"/> 422 Appeal 28 USC 158 <input type="checkbox"/> 423 Withdrawal 28 USC 157 PROPERTY RIGHTS <input type="checkbox"/> 820 Copyrights <input type="checkbox"/> 830 Patent <input type="checkbox"/> 835 Patent - Abbreviated New Drug Application <input type="checkbox"/> 840 Trademark SOCIAL SECURITY <input type="checkbox"/> 861 HIA (1395ff) <input type="checkbox"/> 862 Black Lung (923) <input type="checkbox"/> 863 DIWC/DIWW (405(g)) <input type="checkbox"/> 864 SSID Title XVI <input type="checkbox"/> 865 RSI (405(g))	<input type="checkbox"/> 375 False Claims Act <input type="checkbox"/> 376 Qui Tam (31 USC 3729(a)) <input type="checkbox"/> 400 State Reapportionment <input type="checkbox"/> 410 Antitrust <input type="checkbox"/> 430 Banks and Banking <input type="checkbox"/> 450 Commerce <input type="checkbox"/> 460 Deportation <input checked="" type="checkbox"/> 470 Racketeer Influenced and Corrupt Organizations <input type="checkbox"/> 480 Consumer Credit <input type="checkbox"/> 490 Cable/Sat TV <input type="checkbox"/> 850 Securities/Commodities/Exchange <input type="checkbox"/> 890 Other Statutory Actions <input type="checkbox"/> 891 Agricultural Acts <input type="checkbox"/> 893 Environmental Matters <input type="checkbox"/> 895 Freedom of Information Act
REAL PROPERTY <input type="checkbox"/> 210 Land Condemnation <input type="checkbox"/> 220 Foreclosure <input type="checkbox"/> 230 Rent Lease & Ejectment <input type="checkbox"/> 240 Torts to Land <input type="checkbox"/> 245 Tort Product Liability <input type="checkbox"/> 290 All Other Real Property	CIVIL RIGHTS <input type="checkbox"/> 440 Other Civil Rights <input type="checkbox"/> 441 Voting <input type="checkbox"/> 442 Employment <input type="checkbox"/> 443 Housing/Accommodations <input type="checkbox"/> 445 Amer. w/Disabilities - Employment <input type="checkbox"/> 446 Amer. w/Disabilities - Other <input type="checkbox"/> 448 Education	PRISONER PETITIONS Habeas Corpus: <input type="checkbox"/> 463 Alien Detainee <input type="checkbox"/> 510 Motions to Vacate Sentence <input type="checkbox"/> 530 General <input type="checkbox"/> 535 Death Penalty Other: <input type="checkbox"/> 540 Mandamus & Other <input type="checkbox"/> 550 Civil Rights <input type="checkbox"/> 555 Prison Condition <input type="checkbox"/> 560 Civil Detainee - Conditions of Confinement	FEDERAL TAX SUITS <input type="checkbox"/> 870 Taxes (U.S. Plaintiff or Defendant) <input type="checkbox"/> 871 IRS—Third Party 26 USC 7609	<input type="checkbox"/> 896 Arbitration <input type="checkbox"/> 899 Administrative Procedure Act/Review or Appeal of Agency Decision <input type="checkbox"/> 950 Constitutionality of State Statutes
		LABOR <input type="checkbox"/> 710 Fair Labor Standards Act <input type="checkbox"/> 720 Labor/Management Relations <input type="checkbox"/> 740 Railway Labor Act <input type="checkbox"/> 751 Family and Medical Leave Act <input type="checkbox"/> 790 Other Labor Litigation <input type="checkbox"/> 791 Employee Retirement Income Security Act		
		IMMIGRATION <input type="checkbox"/> 462 Naturalization Application <input type="checkbox"/> 465 Other Immigration Actions		

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):

18 U.S.C. Sec. 1964(c) and 28 U.S.C. Sec. 1331

Brief description of cause:

Complaint for fraud, civil conspiracy to commit fraud, abuse of process, civil violations of Fed. RICO & state RICO

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 22,100,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions):

JUDGE Judge Simon

DOCKET NUMBER 3:17-cv-00623-SI

DATE

01/29/2019

SIGNATURE OF ATTORNEY OF RECORD

s/ Nika Aldrich

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If there are multiple nature of suit codes associated with the case, pick the nature of suit code that is most applicable. Click here for: [Nature of Suit Code Descriptions](#).
- V. Origin.** Place an "X" in one of the seven boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation – Transfer. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407.
 Multidistrict Litigation – Direct File. (8) Check this box when a multidistrict case is filed in the same district as the Master MDL docket.
PLEASE NOTE THAT THERE IS NOT AN ORIGIN CODE 7. Origin Code 7 was used for historical records and is no longer relevant due to changes in statute.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

COLUMBIA SPORTSWEAR NORTH AMERICA,
INC.,

Plaintiff(s)

v.

SEIRUS INNOVATIVE ACCESSORIES, INC.;
VENTEX CO. LTD.; MICHAEL J. CAREY; WENDY
M. CAREY; ROBERT MURPHY; KYUNG-CHAN GO;
MAN-SIK PARK; JOHN DOES 1-5

Defendant(s)

Civil Action No. 3:19-cv-137

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* SEIRUS INNOVATIVE ACCESSORIES, INC.
 c/o Michael J. Carey
 13975 Danielson Street
 Poway, CA 92064

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nika Aldrich (naldrich@schwabe.com)
 David Axelrod (daxelrod@schwabe.com)
 SCHWABE, WILLIAMSON & WYATT, P.C.
 1211 SW Fifth Avenue, Suite 1900
 Portland, OR 97204
 Telephone 503.222.9981; Fax 503.796.2900

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:19-cv-137

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Oregon

COLUMBIA SPORTSWEAR NORTH AMERICA,
INC.,

Plaintiff(s)

v.

SEIRUS INNOVATIVE ACCESSORIES, INC.;
VENTEX CO. LTD.; MICHAEL J. CAREY; WENDY
M. CAREY; ROBERT MURPHY; KYUNG-CHAN GO;
MAN-SIK PARK; JOHN DOES 1-5

Defendant(s)

Civil Action No. 3:19-cv-137

SUMMONS IN A CIVIL ACTION

To: (Defendant's name and address) VENTEX CO., LTD.
2~5F Gumsuk Building
6-15 Baekjaegobunro 7-gil
Songpa-Gu, Seoul, Korea

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nika Aldrich (naldrich@schwabe.com)
David Axelrod (daxelrod@schwabe.com)
SCHWABE, WILLIAMSON & WYATT, P.C.
1211 SW Fifth Avenue, Suite 1900
Portland, OR 97204
Telephone 503.222.9981; Fax 503.796.2900

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:19-cv-137

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____.

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____; or

☐ I returned the summons unexecuted because _____; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00.

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

COLUMBIA SPORTSWEAR NORTH AMERICA,
INC.,

Plaintiff(s)

v.

SEIRUS INNOVATIVE ACCESSORIES, INC.;
VENTEX CO. LTD.; MICHAEL J. CAREY; WENDY
M. CAREY; ROBERT MURPHY; KYUNG-CHAN GO;
MAN-SIK PARK; JOHN DOES 1-5

Defendant(s)

Civil Action No. 3:19-cv-137

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Michael J. Carey
 Seirus Innovative Accessories, Inc.
 13975 Danielson Street
 Poway, CA 92064

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nika Aldrich (naldrich@schwabe.com)
 David Axelrod (daxelrod@schwabe.com)
 SCHWABE, WILLIAMSON & WYATT, P.C.
 1211 SW Fifth Avenue, Suite 1900
 Portland, OR 97204
 Telephone 503.222.9981; Fax 503.796.2900

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:19-cv-137

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

District of Oregon

COLUMBIA SPORTSWEAR NORTH AMERICA,
INC.,*Plaintiff(s)*

v.

SEIRUS INNOVATIVE ACCESSORIES, INC.;
VENTEX CO. LTD.; MICHAEL J. CAREY; WENDY
M. CAREY; ROBERT MURPHY; KYUNG-CHAN GO;
MAN-SIK PARK; JOHN DOES 1-5*Defendant(s)*

Civil Action No. 3:19-cv-137

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Wendy M. Carey
 Seirus Innovative Accessories, Inc.
 13975 Danielson Street
 Poway, CA 92064

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nika Aldrich (naldrich@schwabe.com)
 David Axelrod (daxelrod@schwabe.com)
 SCHWABE, WILLIAMSON & WYATT, P.C.
 1211 SW Fifth Avenue, Suite 1900
 Portland, OR 97204
 Telephone 503.222.9981; Fax 503.796.2900

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:19-cv-137

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
 was received by me on *(date)* _____ .

☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

UNITED STATES DISTRICT COURT

for the

District of Oregon

COLUMBIA SPORTSWEAR NORTH AMERICA,
INC.,

Plaintiff(s)

v.

SEIRUS INNOVATIVE ACCESSORIES, INC.;
VENTEX CO. LTD.; MICHAEL J. CAREY; WENDY
M. CAREY; ROBERT MURPHY; KYUNG-CHAN GO;
MAN-SIK PARK; JOHN DOES 1-5

Defendant(s)

Civil Action No. 3:19-cv-137

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Robert Murphy
 c/o Seirus Innovative Accessories, Inc.
 13975 Danielson Street
 Poway, CA 92064

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Nika Aldrich (naldrich@schwabe.com)
 David Axelrod (daxelrod@schwabe.com)
 SCHWABE, WILLIAMSON & WYATT, P.C.
 1211 SW Fifth Avenue, Suite 1900
 Portland, OR 97204
 Telephone 503.222.9981; Fax 503.796.2900

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

Signature of Clerk or Deputy Clerk

Civil Action No. 3:19-cv-137

PROOF OF SERVICE*(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))*

This summons for *(name of individual and title, if any)* _____
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☐ I personally served the summons on the individual at *(place)* _____
 _____ on *(date)* _____ ; or

☐ I left the summons at the individual's residence or usual place of abode with *(name)* _____
 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. 3:19-cv-137

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 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

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I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc:

Signature of Clerk or Deputy Clerk

Civil Action No. 3:19-cv-137

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 _____ on *(date)* _____ ; or

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 _____, a person of suitable age and discretion who resides there,
 on *(date)* _____, and mailed a copy to the individual's last known address; or

☐ I served the summons on *(name of individual)* _____, who is
 designated by law to accept service of process on behalf of *(name of organization)* _____
 _____ on *(date)* _____ ; or

☐ I returned the summons unexecuted because _____ ; or

☐ Other *(specify)*:

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc: