

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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COLEMAN CABLE, LLC, JIAWEI TECHNOLOGY (HK) LTD., JIAWEI  
TECHNOLOGY (USA) LTD., SHENZHEN JIAWEI PHOTOVOLTAIC  
LIGHTING CO., LTD., ATICO INTERNATIONAL (ASIA) LTD., ATICO  
INTERNATIONAL USA, INC., SMART SOLAR, INC., AND TEST RITE  
PRODUCTS CORP.

Petitioner,

v.

SIMON NICHOLAS RICHMOND

Patent Owner.

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Case No. IPR2014-00935

Patent 8,089,370 B2

**RENEWED MOTION TO EXPUNGE CONFIDENTIAL EXHIBITS**

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Appeal Board U.S. Patent and  
Trademark Office P.O. Box 1450  
Alexandria, VA 22313-1450

## I. INTRODUCTION

Under 37 C.F.R. §42.56, Petitioner, Coleman Cable, LLC, Jiawei Technology (HK) Ltd., Jiawei Technology (USA) Ltd., Shenzhen Jiawei Photovoltaic Lighting Co, Ltd., Atico International (Asia) Ltd., Atico International USA, Inc., Smart Solar, Inc., and Test Rite Products Corp., (collectively “Petitioner”), respectfully submits this renewed motion to expunge exhibits 1027, 1030, 1040, 1051, 1052, 1053, and 1055 ("Confidential Exhibits") from the record. These exhibits contain confidential information of the Petitioner.

The Petitioner respectfully requests that the Board rule on this motion prior to the confidential exhibits becoming part of the public record of this case. Alternatively, Petitioner requests that the Board issue an interim order delaying the public release of the Confidential Exhibits until such a time that the Board can rule on Petitioner’s Motion to Expunge.

## II. BACKGROUND

### A. Procedural Background

On July 17, 2015, Petitioner moved to seal (paper 36) exhibits 1027, 1030, 1040, 1051, 1052, 1053, and 1055. The Board granted the motion in the final written decision (paper 65) stating, “The redacted versions of these documents, upon which we relied in our denial of Patent Owner’s Motion to Terminate (Paper 52), sufficiently disclose the basis for our decision, so there is

little public interest in making the non-redacted versions publicly available.” *Id.* at 9.

On January 29, 2016, the Petitioner motioned to expunge the same documents (Paper 66), which the Board denied until appeals completed or the time for appeal passed with no appeal. *See* paper 67. Patent Owner filed a timely Notice of Appeal on February 16, 2016, and an Amended Notice of Appeal on February 17, 2016. On June 9, 2017, the Federal Circuit issued a Judgment affirming the PTAB’s ruling citing only Rule 36. (*See* Doc. 63). On September 5, 2017, the Federal Circuit entered a mandate (Doc. 78) and later issued a final order denying Appellant’s motion to recall the mandate on February 8, 2018 (Doc. 82). On January 25, 2018, Richmond filed a petition for a writ of certiorari to the Supreme Court. On June 18, 2018, the petition was denied. The time for Richmond to file a motion for rehearing on the decision has elapsed.<sup>1</sup> Therefore, Richmond has exhausted the remedies for appeal for the ’370 patent, and Petitioner renews its motion to expunge the exhibits for the same reasons.

## **B. Applicable Legal Standards**

Under 35 U.S.C. § 316(a)(7), “confidential information” is protected from disclosure. 35 U.S.C. § 316(a)(7) (“The Director shall prescribe regulations... providing for protective orders governing the exchange and submission of

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<sup>1</sup> Under the Rules of the Supreme Court of the United States, Rule 44 states that any petition for the rehearing of any judgment or decision of the Court must be filed within 25 days after entry of the judgment.

confidential information.”) Confidential information should be defined in a manner consistent with Fed. R. Civ. P. 26(c)(1)(G). Trial Practice Guide, 77 Fed. Reg. 48756 at 48760.

Granting a motion to seal confidential information requires showing “good cause.” 37 C.F.R. § 42.54. The same standard applies to a motion to expunge “confidential information” under 37 C.F.R. § 42.56 after final judgment in a trial. *RPX Corp. v. Virnetx Inc.*, IPR 2014-00171, Paper 62 at 3 (PTAB Sept. 9, 2014). the movant generally must show entitlement to the requested relief. 37 C.F.R. § 42.20(c); *RPX Corp.* at 3.

**C. Good Cause Exists to Expunge the Confidential Exhibits from the Record**

The Board already agreed there is good cause for the confidential information to be sealed, and there is “little public interest in making the non-redacted versions publicly available.” Paper 65 at 9. Nothing has changed to reach a different result as the Board has not relied on the sealed, confidential information. Therefore, good cause exists to expunge these confidential documents because: Exhibit 1027 is Southwire Holding Company’s confidential internal document setting forth a resolution of its board of directors.

Exhibit 1030, in which financial account number information has been redacted, includes payment records to Dentons Canada LLP and Dentons US LLP, and depicts confidential payment amount information.

Exhibit 1040 is a confidential internal announcement regarding an internal “Fast Forward” program, including confidential sales and distribution information.

Exhibit 1051 includes copies of invoices to Coleman Cable, Inc. from Dentons US LLP for payments for the proceeding, and related emails, and depicts confidential payment amount and financial account number information.

Exhibit 1052, in which financial account number information has been redacted, includes wire transfer records from Coleman Cable to Dentons US LLP depicting confidential payment amount information.

Exhibit 1053, in which financial account number information has been redacted, includes a copy of a check and a related letter regarding payments from Coleman Cable, LLC for the proceeding and depicts confidential payment amount information.

Disclosure of the above information could put Coleman and Southwire at a commercial disadvantage, for instance in subsequent negotiations with other suppliers. The Petitioner requests these Exhibits, and portions of its Opposition to Motion to Terminate and supporting declaration in Exhibit 1055, be expunged from the record.

On July 16, 2018, Petitioner conferred with Patent Owner, and he does not oppose this motion.

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