

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

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.

U.S. Patent No. 8,089,370 to Richmond
Case No. IPR2014-00935

**PETITIONER'S REPLY TO PATENT OWNER'S
RESPONSE TO PETITIONER'S MOTION TO EXCLUDE CERTAIN
EVIDENCE OF RECORD**

I. Introduction.

Petitioner respectfully submits this Reply to Patent Owner's Response to Petitioner's Motion to Exclude ("Response to Pet. Mot. to Exclude"). For the reasons discussed below and those provided in petitioner's Motion to Exclude ("Motion"), the PTAB should exclude Exhibits 2054, 2062, 2064, 2066, and 2076. The PTAB should also exclude Dr. Shackle's deposition testimony regarding the Unified Glare Rating Formula and "retrospective" review.

II. Because Patent Owner "[R]eserves its [R]ight to [A]ppeal" the Denial of Its Motion to Terminate, Petitioner's Motion to Exclude Exhibits 2054, 2062, 2064, 2066, and 2076 Is Not Moot.

Patent Owner argues that Petitioner's Motion to Exclude exhibits 2054, 2062, 2064, 2066, and 2076 is moot because the Board denied Patent Owner's motion. Patent Owner, however, purports to "reserve[] its right to appeal the decision of the Board." Response to Pet. Mot. to Exclude, Paper No. 54 at 1. This reservation indicates that Patent Owner may attempt to appeal this rejection. Petitioner's Motion, therefore, is not moot. Because Patent Owner fails to argue that the exhibits are not hearsay, or make any other argument justifying their admissibility, Petitioner respectfully requests these exhibits be excluded.

III. The Testimony Regarding “Retrospective Review” Should Be Excluded.

Patent owner improperly argues that the testimony should be permitted because petitioner did not object and that Patent Owner’s hindsight inference is justified based on the testimony. Patent owner is wrong.

First, petitioner’s counsel objected to the question regarding “retrospective analysis” in Ex. 2024 at page 278, line 15. Patent owner’s counsel then re-asked a similar question to which Petitioner’s counsel objected. Petitioner’s counsel then stated “[g]o ahead. I’m sorry” as he had interrupted and Patent Owner’s counsel then asked a similar question with “retrospective review.” *Id.* 278:22-25. The “objection to form” from the previously asked question was believed to be still in effect as the same vague “retrospective” term was being used.

Second, patent owner attempts to convert Dr. Shackle’s answer into improper hindsight that should be excluded because it is not supported by Dr. Shackle’s testimony. As stated in Petitioner’s Motion, Dr. Shackle thought his response to the “retrospective review” question meant that he obtained the prior art, studied it, and provided an opinion. Patent Owner characterization of this analysis as improper hindsight is not supported by the evidence. Because the probative value of this testimony is extremely low, and the potential for unfair prejudice and confusion is very high (as demonstrated by Patent Owner’s argument), this testimony should be excluded under FRE 402 and 403. Petitioner

thus moves to exclude testimony in Ex. 2024, Shackle Depo. at 277:19-279:10, Patent Owner Response, Paper 29 at 7 and Ex. 2021, Ducharme Decl. at ¶ 35.

IV. Testimony regarding the Unified Glare Rating Formula should Be Excluded as Irrelevant.

Since filing Petitioner’s motion to exclude, Patent Owner relied upon the Unified Glare Rating Formula for its Observations #7 and #8. Mot. for Observations, paper 51, pp. 7-9 (citing Ex. 2084 at 99:17-19, 101:14-25, 107:24-108:3, 108:25-109:12, 110:6-14, 112:7-12, 131:21-132:2, and 147:13-16). Patent Owner complains that Petitioner’s objections were not timely, not explained or preserved, and the testimony was relevant. Patent Owner is incorrect.

A. Petitioner objected timely and in the form required by the Board’s Practice Guide

Patent Owner’s complaint about the lack of explanation of the objections is untimely. As explained Petitioner’s Motion to Exclude, Petitioner’s counsel objected many times to this line of questioning. Paper 49, p. 5 (“objections at 102:1–4, 103:11–17, 106:21–107:16, 110:6–14, 110:24–112:1, 112:7–114:20, 116:16–117:14, 122:22–123:10, 123:19–24, 129:12–23, and 136:25–137:12”). Per the Board’s Practice Guide, Petitioner limited its objection to single words. 77 Fed. Reg. 48772. Patent Owner cannot now complain about the form of the objection since it never requested clarification of the objection, and the Board does not permit attorneys to clarify objections absent a request from opposing counsel. *Id.*

Therefore, Petitioner objected timely and explained the objections per the Board's guidance.

B. The Unified Glare Rating Formula is irrelevant because Dr. Shackle testified it was

Patent Owner opposes Petitioner's objection on the basis that the objection goes to weight rather than relevance. As explained in the motion, that is irrelevant because the Unified Glare Rating Formula is used to assess glare caused by light that is orders of magnitude more intense than those generated by LED garden lights having relatively small batteries. Mot. to Ex., p. 5; *see also*, Resp. to Observ., paper 56, pp. 6–9. The testimony is irrelevant because the light is “100,000 times brighter than the context we are considering.” *Id.* Therefore, the Board should exclude the testimony as irrelevant under FRE 402 and 403.

V. CONCLUSION

The Board should GRANT Petitioner's Motion to Exclude.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.