

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

JIAWEI TECHNOLOGY (HK) LTD., JIAWEI TECHNOLOGY (USA) LTD.,
SHENZHEN JIAWEI PHOTOVOLTAIC LIGHTING CO., LTD., ATICO
INTERNATIONAL (ASIA) LTD., ATICO INTERNATIONAL USA, INC.,
CHIEN LUEN INDUSTRIES CO., LTD., INC. (CHIEN LUEN FLORIDA),
CHIEN LUEN INDUSTRIES CO., LTD., INC. (CHIEN LUEN CHINA),
COLEMAN CABLE, LLC, NATURE'S MARK, RITE AID CORP., SMART
SOLAR, INC., AND TEST RITE PRODUCTS CORP.,
Petitioner,

v.

SIMON NICHOLAS RICHMOND,
Patent Owner.

Case IPR2014-00936
Patent 7,196,477 B2

Before KEN B. BARRETT, WILLIAM V. SAINDON, and JUSTIN T. ARBES,
Administrative Patent Judges.

SAINDON, *Administrative Patent Judge.*

DECISION
Granting Petitioner's Renewed Motion to Expunge
37 C.F.R. § 42.56

A Final Written Decision in this proceeding was issued on December 15, 2015. Paper 67. Petitioner filed a Motion to Expunge certain materials filed under seal on January 29, 2016. Paper 68. We denied that Motion as untimely because the time for appeal had yet to expire. Paper 69. We instructed Petitioner to request to file a Renewed Motion to Expunge upon expiration of the time frame for appeal. *Id.* Patent Owner filed a Notice of Appeal on February 16, 2016. Paper 70. The parties later agreed to dismiss the appeal. Ex. 1067. Upon receiving authorization from the panel, Petitioner filed a Renewed Motion to Expunge Confidential Exhibits on November 21, 2017 (Paper 72) and Patent Owner filed an Opposition (Paper 73).¹ We *grant* Petitioner’s Motion.

Petitioner moves to expunge Exhibits 1018, 1021, 1031, 1042–1044, and 1046 (the “Subject Exhibits”). Mot. 1. Petitioner identifies the sensitive nature of the contents of the Subject Exhibits, which we addressed previously in our Final Written Decision. *Id.* at 3–4. In our Final Written Decision, we granted Petitioner’s Motion to Seal the Subject Exhibits. Paper 67, 5–6. As we stated then:

The [Subject] Exhibits generally relate to an internal corporate resolution, listings of financial account numbers, and invoices for attorney fees. *See* [Paper 43] 3–4. The redacted versions of these documents, upon which we relied in our denial of Patent Owner’s Motion to Terminate (Paper 56), sufficiently disclose the basis for our decision, so there is little public interest in making the non-redacted versions publicly available. Accordingly,

¹ Petitioner also filed a Reply. Paper 74. The parties, however, only were authorized to file a Motion and Opposition. Accordingly, the Reply will be expunged. *See* 37 C.F.R. § 42.7(a).

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Petitioner has shown good cause for sealing Exhibits 1018 and 1031, and portions of 1021, 1042–44, and 1046.

Id. Our consideration of the Subject Exhibits was not necessary for our determination of whether the challenged claims of the challenged patent were shown to be unpatentable, but rather only to our determination of whether Petitioner had properly identified all real parties in interest. Further, as we stated in our Final Written Decision, our analysis of the real party in interest issue was resolvable based on the non-redacted versions of the Subject Exhibits. Accordingly, the public interest in having a complete record is satisfied sufficiently without disclosure of the Subject Exhibits. In view of this and the sensitive and financial nature of the documents, Petitioner has established good cause for expunging the Subject Exhibits.

Patent Owner opposes Petitioner’s Motion. Patent Owner states that it intends to file a petition for a writ of certiorari in a related case involving a different patent, IPR2014-00935, in which the Federal Circuit affirmed the Final Written Decision. Opp. 2. Patent Owner also alleges that Petitioner’s request “is an attempt to ‘beat the clock’ on the Supreme Court’s decision in *Oil States Energy Services* or is motivated by some other undisclosed strategy.” *Id.* at 3. Patent Owner alleges that there may be “unintended consequences that have not been fully considered or briefed” if we were to expunge the documents. *Id.*

Patent Owner’s arguments are not persuasive. First, Patent Owner misconstrues our instructions, which allowed Petitioner to move to expunge sensitive documents in each case after the time for appeal expired. For example, we expunged documents in IPR2014-00938 when Patent Owner

did not appeal. Expunging documents in this case, for which there is no outstanding appeal, satisfies our previously stated instructions.

Patent Owner's argument that Petitioner's request to expunge documents is an attempt to "beat the clock" or "motivated by some other undisclosed strategy" for which there may be "unintended consequences that have not been fully considered or briefed" is unpersuasive. This was Patent Owner's opportunity to consider and brief such unintended consequences in its Opposition, yet it alludes to no cogent reason why Petitioner's confidential documents should remain in the record. This case is terminated and final; nothing we do here in our limited, post-final administrative context changes that or affects the Director's statutory requirement to issue a certificate.

ORDER

It is hereby:

ORDERED that Petitioner's Renewed Motion to Expunge Confidential Information (Paper 72) is *granted*;

FURTHER ORDERED that all non-public versions of Exhibits 1018, 1021, 1031, 1042–1044, and 1046 are to be expunged from the record;

FURTHER ORDERED that any public version of the Subject Exhibits will remain in the record; and

FURTHER ORDERED that Paper 74 is to be expunged from the record.

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