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Paper 22
Entered: December 16, 2014

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.

IPR2014-00937
Patent 8,362,700 B2

Before WILLIAM V. SAINDON, JUSTIN T. ARBES, and BARRY L. GROSSMAN, *Administrative Patent Judges*.

SAINDON, *Administrative Patent Judge*.

DECISION
Denying Institution of *Inter Partes* Review
37 C.F.R. § 42.108

I. INTRODUCTION

Petitioner filed a revised petition to institute an *inter partes* review (Paper 14, "Pet.") of claims 1–11, 13–15, 24–34, and 45–47 of U.S. Patent No. 8,362,700 B2 (Ex. 1001, "the '700 patent"). Pet. 1. Petitioner included a declaration of Dr. Peter Shackle (Ex. 1002). Patent Owner filed a Preliminary Response. Paper 21 ("Prelim. Resp.").

We have jurisdiction under 35 U.S.C. § 314, which provides that an *inter partes* review may not be instituted "unless . . . there is a reasonable likelihood that the petitioner would prevail with respect to at least 1 of the claims challenged in the petition." We have reviewed the Petition, Preliminary Response, and the evidence cited therein. For the reasons discussed below, we determine that Petitioner has not demonstrated a reasonable likelihood of showing that any of the challenged claims of the '700 patent are unpatentable.

A. Related Matters

Petitioner states that Patent Owner has asserted a number of lawsuits against the Petitioner companies alleging infringement of the '700 patent. Pet. 3–4; Paper 18, 3; Paper 20, 3–4. Petitioner also asserts it is challenging two other patents in the same family as the '700 patent: U.S. Patent No. 7,196,477 (IPR2014-00936) and U.S. Patent No. 7,429,827 (IPR2014-00938). Pet. 5; Paper 20, 1.

The '700 patent is a continuation-in-part of the '827 patent, which is a continuation-in-part of the '477 patent.

B. The '700 Patent (Ex. 1001)

The '700 patent describes a solar powered light that produces light of varying color. Ex. 1001, 1:19–21. According to the '700 patent, producing light of a variable color is known, and solar powered "garden lights" are known. *Id.* at

1:25–33. The claimed invention "overcome[s] or substantially ameliorate[s] at least one of the . . . disadvantages" of the prior art, which includes "difficulty in adjusting the various lighting functions" and "not producing a uniform desired colour." *Id.* at 1:34–36.

C. Exemplary Claims

Of the claims challenged, claims 1, 45, 46, and 47 are independent. Claims 1 and 45 are reproduced below.

> 1. A lighting device, said device including:
> a lens;
> a circuit comprising:
> at least two light sources of different colors mounted to direct light through at least part of said lens;
> an activation sub-circuit to provide power to said light sources only at low light levels;
> a light sub-circuit to independently control delivery of power to each of said at least two light sources so as to ramp up and ramp down intensity of light emitted over time by said at least two light sources to produce a color changing cycle of more than two colors;
> connections for at least one rechargeable battery to power said circuit; and
> at least one solar cell mounted so as to be exposed to light and operatively associated With said connections to charge said battery.
>
> 45. A lighting device, said device comprising:
> a lens;
> a circuit including:
> at least two electrical light sources of different colors mounted to direct light through at least part of said lens;
> an activation sub-circuit to provide power to said electrical light sources only at low ambient light levels;
> a light sub-circuit to independently control delivery of

power to each of said at least two electrical light sources so as to vary the perceived intensity of light emitted over time by said at least two electrical light sources to produce a color changing cycle of more than two colors;

connections for at least one rechargeable battery to power said circuit;

at least one solar cell mounted so as to be exposed to sunlight and electrically connected to said connections to charge said at least one rechargeable battery; and

at least one user-operated switch operable to control said circuit, With said at least one switch being accessible by said user thereby enabling said user to manipulate said at least one switch to control delivery of power to said at least two electrical light sources.

D. Prior Art and Asserted Grounds

References	Basis under 35 U.S.C.	Claims Challenged
Wu[1] and Chliwnyj[2]	§ 103	1–11, 26–34, and 45–47
Wu, Chliwnyj, and Pu[3]	§ 103	13 and 15
Wu, Chliwnyj, Pu, and Xu[4]	§ 103	14
Wu, Chliwnyj, and Lau[5]	§ 103	24 and 25
Richmond[6] and Shalvi[7]	§ 103	45 and 47

[1] U.S. Patent Application Publication No. US 2003/0201874 A1, published Oct. 30, 2003, filed Apr. 24, 2002 (Ex. 1006).
[2] U.S. Patent No. 5,924,784, issued July 20, 1999 (Ex. 1005).
[3] Chinese Patent Publication No. CN 2522722Y, published Nov. 27, 2002 (Ex. 1008) (certified translation).
[4] Chinese Patent Publication No. CN 2541713Y, published Mar. 26, 2003 (Ex. 1014) (certified translation).
[5] U.S. Patent No. 6,431,719, issued Aug. 13, 2002 (Ex. 1010).
[6] Australian Patent App. No. AU 2002100505 A4, published Nov. 21, 2002 (Ex. 1011).
[7] U.S. Patent No. 6,120,165, issued Sept. 19, 2000 (Ex. 1012).

II. ANALYSIS

A. Claim Construction

Petitioner and Patent Owner propose constructions for the terms "constant colour," "varying color," "switch being accessible by a user," and "securing means." None of these terms need to be construed for purposes of this Decision.

B. Petitioner's Declarant and the Level of Ordinary Skill in the Art

Patent Owner takes issue with Petitioner's declarant and Petitioner's statement of the level of ordinary skill in the art. Regarding Petitioner's declarant, Patent Owner argues that Dr. Shackle "lacks essential qualifications regarding photovoltaic . . . cells, solar powered lights, or consumer products." Prelim. Resp. 3. Patent Owner argues that his declaration "should be stricken from the record . . . or otherwise not relied upon as competent evidence." *Id.* at 5. Patent Owner's concern is unfounded, as we will assign appropriate weight to testimony based on the specific topic discussed and the qualifications of the declarant regarding that topic.[8] The Board, sitting as a non-jury tribunal with administrative and technical expertise, is well-positioned to determine and assign appropriate weight to evidence presented. *Gnosis S.P.A. v. S. Alabama Medical Science Foundation*, IPR2013-00118, slip op. at 43 (PTAB June 20, 2014) (Paper 64); *see also Donnelly Garment Co. v. NLRB*, 123 F.2d 215, 224 (8th Cir. 1941) ("One who is capable of ruling accurately upon the admissibility of evidence is equally capable of sifting it accurately after it has been received."). At this stage of the proceeding,

[8] Dr. Shackle holds degrees in physics and has "over twenty years' experience in the field of lighting electronics, with particular emphasis on [LED] drivers and electronic ballasts," including experience in the electronics industry. Ex. 1002 ¶¶ 2–3. He is also a member of the Institute of Electrical and Electronics Engineers and the Illuminating Engineering Society. *Id.* ¶ 4.

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