

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. (SHIEN LUEN FLORIDA),
CHIEN LUEN INDUSTRIES CO., LTD., INC. (SHIEN 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 No. IPR2014-00938

Patent 7,429,827

MOTION TO EXPUNGE CONFIDENTIAL EXHIBITS

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Patent Trial and Appeal Board

U.S. Patent and Trademark Office

P.O. Box 1450

Alexandria, VA 22313-1450

I. INTRODUCTION

Pursuant to 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., Test Rite Products Corp., Chien Luen Industries Co., Ltd., Inc. (Chien Luen Florida), Chien Luen Industries Co., Ltd., Inc. (Chien Luen China), Nature's Mark, and Rite Aid Corp. (collectively "Petitioner"), respectfully submits this Motion to Expunge Exhibits 1016, 1019, 1029, 1040, 1041, 1042, and 1044 ("Confidential Exhibits") from the record. These exhibits contain confidential information of the Petitioner.

The deadline for filing a motion to expunge in this case is 45 days from the Final Written Decision. See Office Patent Trial Practice Guide ("Trial Practice Guide"), 77 Fed. Reg. 48756, 48760-61 (Aug. 14, 2012). Unless the Board decides this motion before that 45-day deadline, the Confidential Exhibits will become publicly available. *Id.* Because the Confidential Exhibits contain confidential information, Petitioner respectfully requests that the Board rule on this motion prior to the Confidential Exhibits becoming a 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 filed a motion to seal (paper 43) exhibits 1016, 1019, 1029, 1040, 1041, 1042, and 1044. The Board granted the motion in the final written decision (paper 69) stating, “The redacted versions of these documents, upon which we relied in our denial of Patent Owner’s Motion to Terminate (Paper 57), sufficiently disclose the basis for our decision, so there is little public interest in making the non-redacted versions publicly available.” *Id.* at 5-6.

B. Applicable Legal Standards

Pursuant to 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 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 a showing of “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 has the burden of showing 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 that 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 69 at 6. Nothing has changed to reach a different result as the Board has not relied on any of the sealed, confidential information. Therefore, good cause exists to expunge the following confidential documents for the following reasons:

Exhibit 1016 is Southwire Holding Company’s confidential internal document setting forth a resolution of its board of directors.

Exhibit 1019, 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 1029 is a confidential internal announcement regarding an internal “Fast Forward” program, including confidential sales and distribution information.

Exhibit 1040 includes copies of invoices to Coleman Cable, Inc. from Dentons US LLP for payments for the subject proceeding, as well as related

emails, and depicts confidential payment amount and financial account number information.

Exhibit 1041, 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 1042, 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 subject 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. Accordingly, Petitioner requests that these Exhibits, as well as portions of its Opposition to Motion to Terminate and supporting declaration in Exhibit 1044, be filed under seal.

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