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.

Case No. IPR2014-00938
Patent 7,429,827

PATENT OWNER'S MOTION TO TERMINATE THIS PROCEEDING FOR PETITIONER'S FAILURE TO IDENTIFY ALL REAL PARTIES IN INTEREST

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I. Introduction

In May of 2015, Patent Owner learned that Southwire Company, LLC ("Southwire"), which had acquired Coleman Cable LLC ("Coleman") (a co-petitioner in these proceedings), in February of 2014, had its own exhibitor's booth at the 2015 National Hardware Show listed as "Moonrays/Southwire," "Moonrays" being the trademark used by Coleman for selling the products to those that Patent Owner had accused Coleman of infringing his 7,429,827 Patent ("827 Patent"), whose validity is at issue in this proceeding. Furthermore, Patent Owner learned that Mr. Floyd W. Smith, the person who signed the Power of Attorney for Coleman authorizing its participation as Petitioner was, in fact, *Southwire's* Executive Vice President, Secretary and General Counsel. *See* Paper 5; *see also* Declaration by Simon Nicholas Richmond (Hereinafter, "Dec.") ¶¶ 10-11 citing Exs. 2042, 2043.

Further evidence that has come to Patent Owner's attentions since May of 2015 which demonstrates that the purported parent-subsidiary relationship between Southwire and Coleman was, in fact, a merger that integrated operations and marketing, and blurred and eviscerated the corporate lines between these two companies, such that Southwire is a real party in interest and that it controls, or at least could control, this proceeding.

In view of the foregoing, and other evidence discussed herein demonstrating that Southwire is an unnamed real party in interest, Patent Owner moves to terminate this proceeding for Petitioner's failure to comply with 35 U.S.C. § 312(a)(2)'s requirement that *all* real parties in interest ("RPI") be named.

II. Petitioner, not Patent Owner, Bears the Burden of Establishing Compliance Under 35 U.S.C. § 312

"A real party in interest is a party that 'desires review' of the patent at issue, and may be the petitioner itself, and/or it may be the party or parties at whose behest the petition has been filed. *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 88 at p. 7 (January 6, 2015), citing *Zoll Lifecor Corp. v. Philips Elec. North America Corp. et al.*, IPR2013-00606 Paper 13 at 12 (March 20, 2014). "The Board generally accepts the petitioner's identification of real parties in interest at the time of filing the petition." *Atlanta Gas* at p. 7, citing *Zoll* at 7. "[A]ccepting the identification of real parties in interest in a petition as accurate acts as a rebuttable presumption that benefits petitioners." *Id.* And, "[t]he party against whom a presumption is directed has the burden of producing evidence to rebut the presumption. *But this rule does not shift the burden of persuasion, which remains on the party who had it originally*." *Id.* at 8. Thus, once a patent owner presents evidence showing that a real party-in-interest

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