

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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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.

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Case IPR2014-00938  
Patent 7,429,827

**OPPOSITION TO MOTION TO TERMINATE**

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Patent owner ("Richmond") brings its Motion to Terminate ("Mot.") more than one year after the IPRs were filed based on "evidence" that was either available at the time the IPRs were filed, or recent statements (many by third parties) regarding events that occurred long after the IPRs were filed and instituted and thus do not bear on whether Southwire was a real party in interest ("RPI") at the time the IPRs were filed. As demonstrated below, (1) Southwire Company, LLC ("Southwire") did not control, or have the ability to control, direct or fund the IPR petitions, and (2) Petitioner (Coleman Cable, LLC ("Coleman")) and Southwire did not blur the corporate lines between themselves such that Southwire was an RPI.

Even today the two companies are separate. They maintain separate bank accounts, payrolls, plants and facilities, as well employee health, welfare, retirement plans, websites, and ownership of intellectual property. On July 6, 2015, however, Southwire and Coleman completed integration of their customer-facing invoicing such that going forward the two companies may outwardly appear more like one company. Southwire, therefore, may have become an RPI on that date. As such, petitioners concurrently update their mandatory notices to identify Southwire as an RPI. But as set forth below, Southwire was not an RPI at the time of filing or institution, was never sued by Richmond in district court, and remains separate from Coleman even today. The Board should not terminate the IPRs.

**I. SOUTHWIRE WAS NOT AN RPI AT THE FILING DATE.**

**A. Applicable legal principles**

Section 312 governs the filing of petitions and requires, among other things, that the petitioner identify all RPIs at the time the petition is filed. 35 U.S.C. § 312. Section 315 prohibits petitions that are filed more than one year after the petitioner, an RPI, or a privy was served with a complaint. 35 U.S.C. § 315(b). Together, these two statutes ensure that petitioners identify all RPIs to the Board when the IPRs are filed. IPR2012-00042 (Paper 16, at 15-16) (focusing privity/RPI issue on date of filing). A different rule, 37 C.F.R. § 42.8(b), permits adding (or subtracting) RPIs due to changed circumstances. That rule does not affect petition filing dates.

Whether a non-party is an RPI is a highly fact-dependent question. *Office Patent Trial Practice Guide*, 48,756, 48,759 ("*Trial Practice Guide*") (citing *Taylor v. Sturgell*, 553 U.S. 880 (2008)). *Taylor* identifies a six-factor test, including, whether the third party exercised or could have exercised control over the IPR, and whether a pre-existing legal relationship with the party named justifies binding the third party. *Id.* at 883. While in general terms, "a real party in interest is a 'party that desires review of the patent' or 'at whose behest the petition has been filed'" (CBM2014-00179 (Paper 11, at 9) (citing *Trial Practice Guide* at 48,759), "this does not mean that *any* party that desires review of a patent is a real

party in interest." IPR2013-00215 (Paper 47, at 5). Rather, "[c]ourts invoke the terms 'real party-in-interest' and 'privy' to describe relationships and considerations sufficient to justify applying conventional principles of estoppel and preclusion." *Trial Practice Guide* 77 Fed. Reg., at 48,759; IPR2015-00203 (Paper 13, at 5-6). No one single factor controls. CBM2014-00179 (Paper 11, at 8).

**B. The evidence establishes that Southwire did not control, direct, or fund the IPRs, or have the opportunity to do so.**

The RPI analysis focuses on "the relationship between a party and a proceeding." IPR2014-01288 (Paper 13, at 11). The control inquiry, therefore, focuses on whether the non-party could exert control over the IPR, not the petitioner. *Id.*; see also CBM2014-00179 (Paper 11, at 10) (citations omitted) (focusing on whether non-party "had the opportunity to present proofs and argument" or "to direct or control the content" of the filing).

Coleman, not Southwire, controlled the petitions. Although Mr. Floyd Smith worked at Southwire as Executive VP, Secretary and General Counsel (he is now retired), he also acted as Secretary of Coleman from the time Coleman Cable, Inc. was acquired on February 11, 2014. See Ex. 1042 ("Cochran Decl." at ¶¶ 12-13). Mr. Smith signed the Power of Attorney for Coleman in these IPRs as "Secretary," reflecting his title at Coleman and solely on behalf of Coleman. *Id.* He typically signed Power of Attorney documents on behalf of Southwire using his Southwire title. *Id.*, at ¶ 13; Ex. 1017. Mr. Smith did not act as Southwire's "proxy," or on

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