

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.

U.S. Patent No. 7,429,827

IPR Case No.: IPR2014-00938

PATENT OWNER'S NOTICE OF OBJECTION TO EVIDENCE

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PATENT OWNER'S NOTICE OF OBJECTION TO EVIDENCE

Pursuant to 37 C.F.R. § 42.64(b)(1), Patent Owner, Simon Nicholas Richmond (“Patent Owner”), hereby submits its notice of objections to certain evidence that Petitioner, 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. (collectively “Petitioner”), submitted for the first time in connection with its Reply in Case No. IPR2014-00938.

Objected to Belated Exhibits citing Hearsay statements:

Patent Owner objects to the following exhibits under FRE 602 (as lacking personal knowledge), FRE 801 and 802 (as including hearsay statements) and for being belated under Trial Practice Guide, 77 Fed. Reg. 48,767 ¶ I:

- Exhibit 1047, ¶¶ 26-27 – Dr. Peter W. Shackle’s Declaration citing Exhibits 1048-57.
- Exhibit 1048 – George Mueller’s LinkedIn profile
- Exhibit 1049 – Alfred Ducharme's LinkedIn profile
- Exhibit 1050 – Ihor Lys' LinkedIn profile
- Exhibit 1051 – Kevin Dowling’s LinkedIn profile

- Exhibit 1052 – Frederick M. Morgan's Equilar Atlas profile
- Exhibit 1053 – Mike Blackwell's LinkedIn profile
- Exhibit 1054 – Alex Chliwnyj's LinkedIn profile
- Exhibit 1055 – Steven Watts' LinkedIn profile
- Exhibit 1056 – Bethanne Felder's LinkedIn profile
- Exhibit 1057 – LaDell Swiden's LinkedIn profile

Patent Owner objects to certain testimony of Peter W. Shackle submitted as part of Exhibit 1047 (Declaration by Dr. Shackle). Specifically, Patent Owner objects to paragraphs 26 and 27 of Exhibit 1047 to the extent they include hearsay statements and/or to the extent Dr. Shackle offers factual observations without laying foundation or otherwise demonstrating personal knowledge (FRE 602, 702, 703, 801, and 802).

Paragraphs 26 and 27 reference Exhibits 1048-57 which appear to be profiles obtained from third-party websites (i.e., LinkedIn.com and people.equilar.com) and, as such, are hearsay. Additionally, one cannot substantiate the information contained in the underlying exhibits. Thus, the underlying exhibits 1048-57, too, violate FRE 801 and 802.

Further, Petitioner's hearsay exhibits are belated, in violation of Trial Practice Guide, 77 Fed. Reg. 48,767 ¶ I, in that they could have been, but were not, submitted with the revised Petitions or Dr. Shackle's Original Declaration.

Accordingly Exhibits 1047-57 violate FRE 602, 801, and 802 and violate Trial Practice Guide, 77 Fed. Reg. 48,767 ¶ I. Patent Owner reserves the right to move to exclude the noted exhibits.

Objections to Additional Non-Probative and Belated Exhibits:

Patent Owner objects to the following additional exhibits because they were belatedly submitted by Petitioner, in violation of Trial Practice Guide, 77 Fed. Reg. 48,767 ¶ I:

- Exhibit 1047, ¶¶ 35 - 38 – Dr. Peter W. Shackle’s Declaration.
- Exhibit 1047, ¶¶ 50 and 69 – Dr. Peter W. Shackle’s Declaration citing Exhibits 1061-63.
- Exhibit 1058 – Synonyms for "Varying" from Roget’s A-Z Thesaurus, Wiley Publishing, 1999
- Exhibit 1059 – Definition of "Varying" from The American Heritage Dictionary of the English Language, Houghton Mifflin Company, 1978
- Exhibit 1060 – Definition of "Varying" from Webster’s New Universal Unabridged Dictionary, Barnes and Noble Publishing, Inc., 2003
- Exhibit 1061 – Definition of “Accessible” from Webster’s Ninth New Collegiate Dictionary, Merriam-Webster Inc., 1989
- Exhibit 1062 – Synonyms for “Accessible” from Roget’s A-Z Thesaurus, Wiley Publishing, 1999

- Exhibit 1063 – Expert Report of A. Ducharme, Docket Entry #111-3 through #113-13, Case 3:09-cv-02495, U.S. District Court of New Jersey

Petitioner’s citation to Dr. Shackle’s experience in ¶ 35 – 38, which was not introduced until Petitioner’s Reply, is belated in violation of Trial Practice Guide, 77 Fed. Reg. 48,767 ¶ I, in that it could have been, but was not, submitted with the Petitioner’s revised Petition or Dr. Shackle’s Original Declaration.

Further, Petitioner’s exhibits 1058-63 are belated in violation of Trial Practice Guide, 77 Fed. Reg. 48,767 ¶ I, in that they could have been, but were not, submitted with the Petitioner’s revised Petition or Dr. Shackle’s Original Declaration. Likewise, Dr. Shackle’s new testimony that relies on these belated exhibits (exhibit 1047, ¶¶ 50 (citing Exs. 1061 and 1062) and 69(citing Ex. 1063)), equally violates the Trial Practice Guide, 77 Fed. Reg. 48,767 ¶ I. Furthermore, regarding Exs. 1058 – 60 (citing definitions of the term “varying”), these Exhibits are of questionable relevance, under FRE 403, since both Petitioner (at pg. 9 of the Reply) and Patent Owner (at pg. 18 of the Response) both are applying the Board’s construction given in its Decision for purposes of this proceeding.

Accordingly Exhibits 1058 -60 violate FRE 401 and 403, and Exhibits 1047 (¶¶ 35 – 38, 50 and 69), 1058 -63 and 1066 violate Trial Practice Guide, 77 Fed. Reg. 48,767 ¶ I. Patent Owner reserves the right to move to exclude the noted exhibits.

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