

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

---

**PETITIONER'S MOTION TO EXCLUDE EVIDENCE  
PURSUANT TO 37 C.F.R. § 42.64**

## **I. Introduction.**

Under 37 C.F.R. §42.64(c) and the Scheduling Order (Paper No. 21), Petitioner respectfully moves to exclude portions and some in their entirety of Exhibits 2021, 2022, 2023, 2042, 2050, 2052, 2054, 2062 and portions of Papers 34 and 37, relying on that evidence, all proffered with the Patent Owner's motion to terminate or patent owner response. The Federal Rules of Evidence (FRE) apply to these proceedings according to §42.62(a), and these rules support the objections contained herein.

## **II. Exhibits 2042, 2050, 2052, 2054, and 2062 Should Be Excluded as Containing inadmissible Hearsay.**

### **A. Patent Owner's LinkedIn Profiles Contain Inadmissible Hearsay.**

Exhibits 2042, 2050, 2052, 2054, and 2062 should also be excluded as inadmissible hearsay. *See* FRE 801 and 802; *see also United States v. Jackson*, 208 F.3d 633, 637 (7th Cir. 2000) (web postings from the Internet were inadmissible hearsay); *St. Clair v. Johnny's Oyster & Shrimp, Inc.*, 76 F. Supp. 2d 773, 775 (S.D. Tex. 1999) ("Internet [evidence] is adequate for almost nothing, even under the most liberal interpretation of the hearsay exception rules...."). Petitioner preserved its objections by filing and serving its Notice of Objection to Evidence, Paper 38.

Patent Owner relies on the information in Exhibits 2042, 2050, 2052, 2054, and 2062 for the truth of the matter asserted, *e.g.*, that Coleman employees had dual roles at both Southwire and Coleman. (*See* Paper No. 37). But, Patent Owner provided no foundational evidence or testimony to establish that Exhibits 2042, 2050, 2052, 2054, and 2062 meet a hearsay exception. For example, Patent Owner has not established that Exhibits 2042, 2050, 2052, 2054, and 2062 were made “at or near the time” of the act purported to be true, *i.e.*, the time of filing of the petition. *See* FRE 803(6). This is not surprising given that Petitioner explained the Coleman employee’s actual roles differed from that reflected on LinkedIn. (Ex. 1044, Cochran Decl., ¶¶ 36-38). Petitioners have no control over what employees post on LinkedIn, and therefore the Board should exclude these exhibits because one cannot adequately substantiate the reliability of these out-of-court statements introduced to prove the truth of the matter asserted.

**B. Portions of the Motion to Terminate Should Be Excluded as They Refer to Inadmissible Hearsay.**

As discussed above, Exhibits 2042, 2050, 2052, 2054, and 2062 contain inadmissible hearsay. It therefore follows that testimony relying on that hearsay should also be excluded. Specifically, Patent Owner’s Motion to Terminate, Paper 37 at pp. 8-9 should be excluded.

### **III. Portions of Exhibits 2022 and 2023, First Deposition Testimony of Peter Shackle, Should Be Excluded Irrelevant under FRE 402 and 403.**

During the April 22-23, 2015 deposition testimony of Petitioner's expert, Dr. Peter Shackle, Petitioner preserved objections by making timely objections on the record. Now, Petitioner moves to exclude portions of Dr. Shackle's testimony under FRE 402 and 403.

#### **A. The Testimony Regarding the Ambiguous Claim Term "Varying" Should Be Excluded.**

Petitioner moves to exclude deposition testimony related to the claim term "varying." *See* Ex. 2022, Shackle Depo. at 59:5-8, 68:25-69:2, 70:9-17, 71:7-10, and 180:19-25. Patent Owner relied on select portions of testimony to draw an inaccurate and misleading conclusion that Dr. Shackle agreed with Patent Owner's claim construction for "varying color." *See* Patent Owner Response, Paper 34 at pp. 15-18. Patent Owner misstated Dr. Shackle's testimony in piecing together the select portions of testimony. Petitioner moves to exclude this testimony under FRE 402 and 403 as confusing the issues and misleading, and moves to exclude the testimony as simply irrelevant.

"Varying" is part of an already construed term, "varying color." Petitioner and Patent Owner both presented constructions. The Board chose its own construction rejecting both parties' constructions. During the deposition, counsel for Patent Owner presented questioning without identifying whose construction the

questions were being posed under. Patent Owner failed to provide guidance to Dr. Shackle in the line of questioning regarding the construction; thus, this testimony is confusing and misleading. Petitioner moves to exclude the testimony cited above in Shackle Depo., Ex. 2023 at 57:23- 65:5, 68:4--79:24, and 167:16-183:19. and Paper 34 at 15-17. under FRE 402 and 403 and moves to exclude as irrelevant because of the ambiguity.

**B. The Testimony Regarding the Improper and Abstract Hypothetical Regarding “Exposed Switch” Should Be Excluded.**

Counsel for Patent Owner presented confusing and incomplete hypotheticals regarding “exposed” and “hidden” switches. *See* Ex. 2022, Shackle Depo. at 99:23–25, 100:22–101:1, 103:2–4, 106: 1- 8, 111:9-13, 113:4–8, and 114:3–11. (Patent Owner deposition citations are not even complete questions and answers; they are chopped mid-question and answer.) Again, Patent Owner relies on only select portions of Dr. Shackle’s testimony presenting an incomplete and misleading conclusion that misstates his testimony.

Counsel for Petitioner objected to this line of questioning multiple times. *See id.* at 99:1-100:20, 106:16, 108:22, 109:9, 110:1, 110:12, 110:17, 111:20, and 114:19. When asked by counsel for Patent Owner the nature of the objection, Counsel for Petitioner stated “You’re giving an example of an abstract consumer product with no definition, so it might or might not be a design consideration,

# Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

## Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

## Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

## Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

## API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

## LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

## FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

## E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.