

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 RESPONSE TO
PATENT OWNER'S MOTION FOR OBSERVATION REGARDING
CROSS-EXAMINATION OF DR. PETER W. SHACKLE**

I. Introduction.

Petitioner submits this response to patent owner's Motion for Observation Regarding Cross-Examination of Dr. Peter W. Shackle as authorized by the Scheduling Order (Paper No. 21).

II. Response to Observation #1.

Patent Owner relies on two snippets out of a longer line of questioning to argue that Dr. Shackle's testimony rebuts petitioner's argument that a person of ordinary skill in the art would combine Lau with Chliwnyj for the limitation of blue and green LEDs. Patent owner also argues that the cited testimony rebuts Petitioner's argument that Chliwnyj's flame waveforms are still produced by the microprocessor regardless of the chosen LED colors, but the line of questioning had nothing to do with Chliwnyj.

Dr. Shackle's testimony does not rebut Petitioner's earlier arguments. In Observation #1, patent owner stated that Dr. Shackle's testimony regarding Ex. 2085 and Ex. 1064 rebuts petitioner's earlier arguments that "[b]ecause the waveforms in Chliwnyj are of constant shape, the substitution of different LEDs (*e.g.*, green and blue) in Chliwnyj would just result in a different colored flame. Shackle II (Ex. 1047), at ¶ 71. Thus, while the perception of the flame may vary somewhat if different LED colors are used, the waveforms will still be reproduced

by the microprocessor. Shackle II (Ex. 1047), at ¶ 71.” (Petitioner’s Reply, Paper No. 50, p. 23).

Prior to presenting Exhibit 2085 to Dr. Shackle, counsel for patent owner presented Dr. Shackle with Ex. 2084 which is a plastic, translucent diffuser in the shape of a candle with a center piece shaped like a flame. The LED is placed inside the flame piece. *See* Ex. 2084. Thus, the LED is covered by the flame shaped piece of the plastic, translucent diffuser. The LED appeared to be a yellow color as viewed through the plastic, translucent diffuser. Dr. Shackle testified that this Exhibit looked like a flickering flame:

22:17-25:15

17 Now, Dr. Shackle, I have a, I don't know
18 what to call it, an electric candle that I purchased at
19 a store. And I don't know whether this has multiple
20 colors in it or not, but is that -- does that appear to
21 be attempting to simulate a flame?

22 A. I'm sorry, let me have a good look at it. May
23 I pull it over?

24 Q. You have to push the button at the same time.

25 A. Oh, okay. Oh, it's supposed to have a control
1 box with it?

2 Q. That's just the way it works.

3 A. By Chliwnyj's standards it's a very pathetic
4 simulation, but yes, I think that's what it's attempting
5 to do.



Ex. 2084.

6 Q. Okay. Now, Chliwnyj also describes having a
7 diffuser around the LED elements, doesn't it?

8 A. Yes.

9 Q. Okay. And the diffuser element is going to
10 diffuse the different colors of light together so that
11 the ones that are on at a given time are going to create
12 a combined color; is that correct?

13 A. In general terms, yes. There's a bunch of
14 different -- several different embodiments, and you
15 might require a detailed interpretation for each one,
16 but in general terms, yes.

17 Q. Okay. Doesn't every embodiment have a diffuser
18 around the LEDs?

19 A. I'm not convinced it does, no, but some of them
20 do.

21 Q. Okay. But you can't recall as we're sitting
22 here right now any that do not?

23 A. I think the very first one probably doesn't.

24 Real quick, where are we?

25 The -- I think that the -- by the looks of

it, the Figure 5 one, I don't think there's a diffuser
2 in there, unless the glass, casing 60, was frosted,
3 which it might have been.

4 (Pausing.)

5 I'm just trying to find where he describes

6 Figure 5.

7 Okay. So it says the bulb may have a
8 frosted light diffusion and there's an optional inner
9 diffuser there. So it could, therefore, the possibility
10 exists. I just think it could have no diffusing
11 whatsoever.

12 Q. Now, if -- to the extent that Chliwnyj -- if
13 there's no diffuser, what would you see?

14 A. You would see little lights darting up and down
15 the stem.

16 Q. *And would that look more like a flame or less
17 like a flame?*

18 A. *Depends how close you were to it, I think.*

19 *Close-up it would look like lights moving up and down
20 the stem, but if you were back 6 feet from it, it would
21 probably look like a flickering flame.*

22 Q. Okay. That is, if you were back 6 feet from it
23 would -- all the colors would blend together anyway; is
24 that right?

25 A. Just think about -- that thing -- I would
1 presume it's the size of a regular sort of candelabra
2 lamp, maybe so size (indicating), so if the light --
3 some of those LEDs were as much as an inch apart of each
4 other, I think at 6 feet you would probably still see
5 the movement up and down. There would be a certain
6 amount of blending of colors, but not total.
7 I mean, for something like the relaxation
8 lighting device then, as he described it, you would have
9 a total blending of the colors.

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