

**UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE PATENT TRIAL AND APPEAL BOARD**

ONE WORLD TECHNOLOGIES, INC., D/B/A TECHTRONIC
INDUSTRIES POWER EQUIPMENT,
Petitioner,

v.

CHERVON (HK) LIMITED,
Patent Owner.

Case PGR2020-00061
Patent 10,524,420

**PATENT OWNER'S OPPOSITION TO PETITIONER'S
MOTION TO UPDATE MANDATORY NOTICES**

Pursuant to the Board’s August 27, 2020 Order (Paper 7), Patent Owner submits its opposition to Petitioner’s motion to update its mandatory notice to identify additional real parties-in-interest (“RPIs”), Techtronic Industries Co. Ltd. (“Techtronic”), Techtronic Industries North America, Inc. (“TTI NA”), and Homelite Consumer Products, Inc. (“Homelite”).

I. INTRODUCTION

Petitioner failed to comply with the unambiguous language of the PGR statute and the PTO rules when it failed to identify all RPIs at the time it filed its Petition. And now that *Patent Owner* has pointed out the incorrect representations that Petitioner has made to the Board about the true RPIs here, Petitioner continues to claim that such parties are not RPIs, ignoring a mountain of evidence suggesting otherwise. Petitioner asks the Board to forgive what the facts demonstrate is, at worst, a bad-faith concealment of three RPIs, or, at best, gamesmanship to avoid estoppel. Petitioner ignores that it was aware of the importance of the unnamed RPIs to this proceeding when it filed its Petition. Petitioner knew of the close relationship between itself and the unnamed RPIs as they related to the products accused of infringement by Patent Owner in the parallel district court litigation (the “Litigation”). Petitioner also knew that all of the unnamed RPIs stand to directly benefit if the Board invalidates any of the claims. Yet Petitioner ignores all of these facts and fails to provide any reasonable factual explanation for its omission of the

unnamed RPIs. The Board should deny Petitioner’s motion to update its mandatory notice to identify additional RPIs and retain its original filing date.

II. ARGUMENT

A. Petitioner Knew At The Time It Filed Its Petition That It Had Failed To Name Several RPIs.

The PTAB conducts the RPI analysis “with an eye toward determining whether the non-party is a *clear beneficiary* that has a preexisting, established relationship with the petitioner.” *Ventex Co., Ltd. v. Columbia Sportswear North Am., Inc.*, IPR2017-00651, Paper 148, at 6 (Jan. 24, 2019) (quoting *Applications in Internet Time*, 897 F.3d at 1351) (emphasis added)). When a party receives a “direct benefit of a finding of unpatentability,” as opposed to a “merely generalized benefit,” that party is likely an RPI. *See id.* at 10.

At the time it filed the Petition, Petitioner knew that the unnamed RPIs (i) were critically involved in the development of the products accused of infringement in the Litigation, had committed allegedly infringing acts, and stood to directly benefit from a Board holding of invalidity and (ii) have blurred corporate lines with Petitioner. Under these circumstances, the only conclusion to reach is that Petitioner knew that it failed to name several RPIs when it filed its Petition.

First, Petitioner was aware of the critical importance that Techtronic, Homelite, and TTI NA play in this proceeding when it filed its Petition. Petitioner knew that each of the unnamed RPIs played an integral role in the design,

development, importation, distribution and/or customer service for the accused products in the Litigation. For example, Petitioner knew that Homelite imports and distributes, *i.e.*, allegedly infringing acts, “[a]ll of the Accused Products” according to Petitioner (and Techtronic) in the Litigation. (EX2008, Litigation, Techtronic and Petitioner’s Objs. and Resps. to Patent Owner’s Second Set of Interrogatories, at 6.) Petitioner also knew that Homelite and Techtronic were involved in the design and/or development of the accused products. (EX2019, Declaration of Matthew J. Levinstein, ¶ 5.) Petitioner knew that TTI NA provided consumer warranties for all Ryobi 40V Lithium products, including the mowers accused of infringement in the Litigation. (EX2021, Warranty On All RYOBI 40V Lithium-Ion Outdoor Tools, available at <https://www.ryobitools.com/support/warranties>.) Petitioner knew all of the foregoing at the time it filed its Petition at least because it shares legal counsel with Homelite and Techtronic (and presumably TTI NA).

The three entities also attempted to settle the Litigation as one. Specifically, Lee Sowell, an employee of Petitioner (according to Petitioner¹), attempted to settle

¹ Petitioner falsely states that Patent Owner “concludes, without any support that “TTI’ stands for Techtronic Industries Co. Ltd..” (Paper 8, at 4.) To the contrary, Patent Owner explained that Techtronic itself uses “TTI” to denote Techtronic, in Techtronic’s annual report. (Paper 11, at 52.)

the Litigation on behalf of Techtronic, Homelite, *and* Petitioner. Regardless of who Mr. Sowell works for, he, as President of Petitioner, was aware of the Litigation, the fact that both Homelite and Techtronic were named defendants, and that the unnamed RPIs all played an integral role in the design and sale of the accused products identified in the Litigation.

Second, Petitioner knew that there was substantial corporate overlap between itself and the unnamed RPIs when it filed its Petition. Techtronic and Petitioner have blurred the lines of corporate separation between them for at least the reasons identified in Patent Owner's Preliminary Response (which Patent Owner hereby incorporates by reference). (Paper 11, at 50-57.)

There is additional overlap between Petitioner and the other unnamed RPIs:

- Homelite and Petitioner share a principal place of business: 100 Innovation Way, Anderson, South Carolina 29621. (EX2007, District Court Litigation, Defendants' Answer to Plaintiffs' Second Amended Complaint, at 2.);
- Homelite and Petitioner share counsel in the Litigation; (*See, e.g., id.*)
- Petitioner and TTI NA have common directors. (*Compare* **EX2022**, Petitioner's Delaware Annual Franchise Tax Report, at 5-6, *with* **EX2023**, TTI NA's Delaware Annual Franchise Tax Report, at 4.);
- Prior Petitioner IPRs have named TTI NA as an RPI. (*See* IPR2016-01772, Paper 2; IPR2016-01774, Paper 2; IPR2016-01846, Paper 2; IPR2017-00073, Paper 2; IPR2017-00126, Paper 1; IPR2017-00214, Paper 2; IPR2017-00432, Paper 1; IPR2017-01040, Paper 2; IPR2017-01042, Paper 2; IPR2017-01132, Paper 2; IPR2017-01137, Paper 2; IPR2017-01546, Paper 2.)
- Prior IPRs brought by a related entity have named Petitioner, Techtronic, and TTI NA as RPIs. (*See* IPR2015-01461, Paper 2; IPR2015-01462, Paper 2.)

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