

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. 7,196,477 B2

IPR Case No.: IPR2014-00936

PATENT OWNER'S NOTICE OF APPEAL

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
Madison Building East, 10B20
600 Dulany Street
Alexandria, VA 22314-5793

PATENT OWNER'S NOTICE OF APPEAL

Notice is given, pursuant to 35 U.S.C. §§ 141(c) and 142, 37 C.F.R. §§ 90.2(a) and 90.3(a), that Patent Owner Simon Nicholas Richmond ("Patent Owner") hereby appeals to the United States Court of Appeals for the Federal Circuit from the Final Written Decision (Decision) entered on December 15, 2015 (Paper 67) by the Patent Trial and Appeal Board ("PTAB") of the United States Patent and Trademark Office ("USPTO"), and further appeals from all orders, decisions, rulings, and opinions, without limitation, underlying the Decision, including the following:

1. Decision – Institution of *Inter Partes* Review (Paper 21) entered on December 16, 2014;
2. Decision – Denying Patent Owner's Motion to Terminate (Paper 56) entered on August 21, 2015; and
3. Decision – Final Written Decision (Paper 67) entered on December 15, 2015.

Pursuant to 37 C.F.R. § 90.2(a)(3)(ii), Patent Owner identifies issues for appeal as including, but not limited to, the following:

1. Whether the USPTO Director exceeded her authority in instituting the *inter partes* review, under 35 U.S.C. § 315(a)(1).
2. Whether 35 U.S.C. § 314(d) is unconstitutional, to the extent that it prevents judicial review to determine compliance with statutory limits of an *inter partes* review proceeding.

3. Whether the PTAB erred in using the broadest reasonable interpretation (“BRI”) as the standard for construing the claims of the U.S. Patent No. 7,196,477 (“477 Patent”).
4. Whether the PTAB erred in construing the claims of the 477 Patent.
5. Whether the PTAB erred in determining the unpatentability of the claims of the 477 Patent under 35 U.S.C. § 103(a).
6. Whether the PTAB erred in failing to terminate this proceeding for Petitioner’s failure to satisfy the requirements of 35 U.S.C. § 312, i.e., to identify all real parties in interest (Paper 56).
7. Whether the PTO exceeded its rulemaking authority and violated applicable provisions of the AIA and due process guarantees in transferring the Director’s institution authority to the same administrative patent judges of the PTAB that were charged with rendering the final written decision.
8. Whether the invalidation of Patent Owner’s rights under 35 U.S.C. § 318, through *inter partes* review, violates the Constitution, including Article III, the separation of powers doctrine and the Seventh Amendment right to a trial by jury.
9. Any other findings or determinations supporting the above raised issues, and any other issues decided adversely to Patent Owner.

Patent Owner acknowledges that a divided panel of the Federal Court of Appeals in *In re Cuozzo Speed Technologies, LLC*, 793 F.3d 1268 (Fed. Cir. 2015), held that the

Board may apply the BRI standard in claim construction of unexpired patents and that decisions to institute an IPR are not judicially reviewable. Patent Owner further acknowledges that the sharply divided Court denied *en banc* review (in a narrow 6-5 decision), but the United States Supreme Court has since granted certiorari on these issues. *See In re Cuozz'co*, 84 U.S.L.W. 3218 (U.S. Jan. 15, 2016). Thus, the Supreme Court's decisions on these pending issues will materially affect the appeal in this Case.

Concurrently with this submission, a copy of this Notice of Appeal is being filed with the PTAB. In addition, three (3) copies of this Notice of Appeal are also being filed with Clerk's Office of the United States Court of Appeals for the Federal Circuit. No fees are believed to be due to the United States Patent and Trademark Office in connection with this filing, but authorization is hereby given for any required fees to be charged to Deposit Account 50-5656 of SHIELLS LAW FIRM P.C.

Dated: February 16, 2016

Respectfully submitted,

 /Theodore F. Shiells/
Theodore F. Shiells
Reg. No. 31,569

SHIELLS LAW FIRM P.C.
Pacific Place Building
1910 Pacific Avenue - Suite 14000
Dallas, Texas 75201

Attorneys for Patent Owner

CERTIFICATE OF FILING AND SERVICE

The undersigned certifies that, in addition to being filed electronically through the Patent Trial and Appeal Board's Patent Review Processing System (PRPS), the foregoing Patent Owner's Notice of Appeal was filed with the Director of the United States Patent and Trademark Office at the following address:

Director of the United States Patent and Trademark Office
c/o Office of the General Counsel
Madison Building East, 10B20
600 Dulaney Street
Alexandria, VA 22314-5793

The undersigned also certifies that three (3) true and correct copies of the foregoing Patent Owner's Notice of Appeal were filed with the Clerk's Office of the United States Court of Appeals for the Federal Circuit at the following address:

Clerk of Court
United States Court of Appeals for the Federal Circuit
717 Madison Place, N.W., Suite 401
Washington, DC 20005

The undersigned further hereby certifies that a copy of the foregoing Patent Owner's Notice of Appeal is being served on February 16, 2016, via email to attorneys for Petitioner:

mark.nelson@dentons.com
Mark C. Nelson (Reg. No. 43,830)
Dentons US LLP
2000 McKinney Ave.Suite 1900
Dallas, Texas 75201

lissi.mojica@dentons.com
Lissi Mojica (Reg. No. 63,421)
kevin.greenleaf@dentons.com
Kevin Greenleaf (Reg. No. 64,062)
Dentons US LLP
1530 Page Mill Road, Suite 200
Palo Alto, California 94304-1125

daniel.valenzuela@dentons.com
Daniel Valenzuela (Reg. No. 69,027)
Dentons US LLP
233 South Wacker Drive, Suite 7800
Chicago, IL 60606-6306

iptdocketchi@dentons.com

/Theodore F. Shiells/
Theodore F. Shiells