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February 3, 2026

VIA EMAIL

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**Re: IPR2024-01357/IPR2025-00260/IPR2025-00698 – Savant et al. v. Feit Electric Co.
– False Testimony of Dr. Schubert**

Counsel:

Parties and individuals involved in *inter partes* review proceedings “have a duty of candor and good faith to the Office during the course of [the] proceeding.” 37 C.F.R. § 42.11(a). This duty requires that all factual contentions “have evidentiary support” and are not presented for “any improper purpose.” *Id.* § 11.18(b)(2). As the Office has emphasized, “if the party is or becomes aware of incorrect or inconsistent positions, the party must make the PTAB panel aware of the incorrect or inconsistent positions and must submit the inconsistent information.” Duties of Disclosure and Reasonable Inquiry During Examination, Reexamination, and Reissue, and for Proceedings Before the Patent Trial and Appeal Board, 87 Fed. Reg. 45,764, 45,765 (July 29, 2022).

Counsel is also subject to duties under the USPTO Rules of Professional Conduct. Under 37 C.F.R. § 11.303(a)(3), a practitioner who “has offered material evidence and who comes to know of its falsity” must “take reasonable remedial measures, including, if necessary, disclosure to the tribunal.”

This letter concerns false testimony given by Patent Owner’s expert, Dr. E. Fred Schubert, in his September 12, 2025 deposition in IPR2024-01357. When asked whether he had ever been the subject of a formal investigation involving accusations of dishonesty or fraud, Dr. Schubert answered “No.” That testimony was false.

Dr. Schubert was the subject of NSF Office of Inspector General Investigation I09020004, which investigated allegations that he failed to disclose his interest in a family-owned company and that his company misused federal SBIR funds. Dr. Schubert personally requested documents from this investigation by FOIA—*citing the investigation by case number*. In 2021, Dr. Schubert testified under oath that he recalled the investigation. In 2025, he denied it existed.

This letter sets forth the evidence establishing that Dr. Schubert’s testimony was false and that he knew it was false when he gave it. Petitioners request that Patent Owner take appropriate remedial measures, including correction of the record and disclosure to the Board.

I. Dr. Schubert testified under oath that he had never been the subject of a formal investigation involving accusations of dishonesty or fraud

1. On September 12, 2025, Dr. Schubert was deposed in IPR2024-01357. (EX1048 (Schubert Dep. Tr., Sept. 12, 2025).)

2. Dr. Schubert testified as follows:

Q: Dr. Schubert, have you ever been the subject of a formal investigation or proceeding involving accusations of dishonesty or fraud?

A: No.

Q: Did you say no?

A: Correct.

(EX1048, 89:7–13.)

3. When shown a log of FOIA requests reflecting requests made by Dr. Schubert, his wife Jutta Schubert, and Troy Research Corporation concerning NSF investigations, Dr. Schubert testified that he did not recall why NSF might have documents containing allegations of fraud against him (*id.* at 109:2–8); did not recall what conflicts of interest NSF was investigating (*id.* at 110:2); had “no recollection” how many FOIA requests he made (*id.* at 111:5); and did not know why his wife would be making such requests (*id.* at 112:20).

4. When asked about Troy Research Corporation, Dr. Schubert testified that it was “a startup company” (id. at 112:25); that he did not recall what business Troy Research Corporation was in (id. at 113:6); and that he did not recall his wife's involvement with the company (id. at 113:13).

5. On October 10, 2025, Dr. Schubert was deposed in *Feit Electric Co. v. Elong International USA Inc.*, No. 3:24-cv-01089 (N.D. Tex.). (EX1182 (Schubert Dep. Tr., Oct. 10, 2025).) When shown the I09020004 Closeout Memorandum, Dr. Schubert testified: “I do not” recognize the document. (EX1182, 95:7–9.) When shown a FOIA log entry bearing his own name that cited Investigation I09020004 by case number, Dr. Schubert admitted his name appeared but answered “I don’t know” when asked if he made the request. (*Id.* at 97:12–15.)

II. Dr. Schubert was the subject of NSF OIG Investigation I09020004

A. The NSF OIG identified a pattern of SBIR fraud involving professors' family-owned companies

6. In September 2011, the NSF Office of Inspector General reported to Congress that it had reviewed “recent investigations related to the Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) programs, to determine whether NSF could reduce the risk of fraud.” (EX1170 (NSF OIG Semiannual Report to Congress, Sept. 2011), p. 18.)

7. The OIG identified a pattern involving companies that “did not either own or rent space to perform the funded work” and instead “improperly used facilities at research universities.” (*Id.*) The OIG further reported:

Several investigations identified company owners taking advantage of students or family relationships to circumvent this rule. In these cases, the individuals identified by the companies as PIs were not the individuals responsible for the proposed research, but named as PIs in the proposals only because the persons conducting the research were ineligible due to the primary employment rule.

(*Id.*)

8. The OIG recommended that NSF “[r]equire awardees to disclose any family or student / postdoc / professor relationships or potential conflicts of interests between company personnel and subcontractor personnel prior to each award.” (*Id.*)

B. Investigation I09020004 concerned a professor who founded a company with his wife

9. NSF OIG Investigation I09020004 resulted in a Closeout Memorandum stating:

OIG opened this investigation based on an allegation that a Principal Investigator (PI) on an NSF award had not disclosed to the awardee institution his interest in a small business he had founded with his wife. It was also alleged that the PI’s company had misused funds received under a Small Business Innovation Research award from NSF.

(EX1169 (I09020004 Closeout Memorandum).)

10. The investigation closed without a finding of wrongdoing, but the Closeout Memorandum confirms that OIG “received numerous complaints by the PI and his wife” and that OIG “had attempted to meet with the PI and his wife regarding their concerns and allegations but they declined to do so.” (*Id.*)

C. Dr. Schubert's FOIA requests identify him as the subject of Investigation I09020004

11. Dr. Schubert cited Investigation I09020004 by case number in a FOIA request. On January 12, 2011, Dr. Schubert filed FOIA Request 11-29, requesting: “Closeout Memorandum / Investigation Report, Reference Number I09020004.” (EX1192 (NSF FOIA Log, Request 11-29).)

12. Dr. Schubert described the investigation in his own words. On May 12, 2011, Dr. Schubert filed FOIA 2011-487, in which he wrote: “The National Science Foundation conducted an investigation into possible conflicts of interests (COIs) that I may have had as Principal Investigator of the Smart Lighting Engineering Research Center (NSF Award # 0812056).” (EX1172; EX1048, 109:16–22.)

13. Dr. Schubert acknowledged declining to meet with OIG investigators. On February 22, 2011, Dr. Schubert filed FOIA 2011-452, seeking “[a]ll documents pertaining to NSF OIG personnel requesting to meet with me, E. Fred Schubert, during the NSF OIG investigation that has the Case Number [redacted].” (EX1172.) The following day, Dr. Schubert filed FOIA 2011-454, seeking “[a]ll documents pertaining to me (E. Fred Schubert) allegedly declining requests by OIG personnel to meet with me during an OIG investigation.” (*Id.*) The Closeout Memorandum states that OIG “had attempted to meet with the PI and his wife regarding their concerns and allegations but they declined to do so.” (EX1169.)

14. Dr. Schubert sought documents concerning fraud allegations against him. On March 14, 2011, Dr. Schubert filed five FOIA requests (FOIA 2011-188, 2011-190, 2011-191, 2011-192, and one additional request) seeking “all documents . . . that contain any allegations made against Fred Schubert. These allegations may include, but are not limited to, fraud, failure to disclose interest in any entity, violation of any law, violation of NSF procedures, providing false and/or misleading information to NSF and/or Rensselaer, unethical conduct etc.” (EX1172.)

D. Troy Research Corporation matches the company described in the investigation

15. Troy Research Corporation received a \$100,000 Phase I SBIR award from NSF in 2005 (Award #0512690). (EX1186 (SBIR.gov Award Record), perma.cc/G63H-63UR.)

16. The SBIR award lists Troy Research Corporation’s address as “18 Ledgewood Drive, Suite 110, Troy, NY.” (*Id.*) Dr. Schubert owned 18 Ledgewood Drive from 2003 through July 13, 2009. The property is classified as a single-family residence. (EX1187 (Rensselaer County Property Records), perma.cc/FS65-NAFP.)

17. The SBIR award lists Jong Kyu Kim as Principal Investigator. (EX1186.) Dr. Kim was a member of Dr. Schubert’s research group at RPI and co-authored a 2008 paper with Dr. Schubert on the same LED encapsulant technology that was the subject of the

SBIR award. That paper acknowledged both NSF and Troy Research Corporation as funding sources, and stated that the “chemical compositions” of surfactants used in the research “are trade secrets of Troy Research Corporation.” (EX1178 (Mont et al., “High-refractive-index TiO₂-nanoparticle-loaded encapsulants for light-emitting diodes,” J. Appl. Phys. 103, 083120 (2008)).)

18. Dr. Schubert’s son, Martin Schubert, served as Chief Technical Officer of Troy Research Corporation from October 2007 through June 2009. (EX1177 (LinkedIn Profile of Martin Schubert).)

19. In April 2009, Troy Research Corporation won the NASA Earth/Space Engineering Award at the Rice Business Plan Competition. (EX1179.) In May 2009, Troy Research Corporation was a finalist for the MIT Clean Energy Prize. (EX1193.) In June 2009, Martin Schubert’s tenure as CTO ended. (EX1177.)

20. Investigation I09020004 matches the pattern NSF OIG identified: a PI at a research university founded a company with his wife; the company received SBIR funds; a member of the PI’s research group was listed as PI on the SBIR award; the company’s address was the PI’s personal residence; and a family member served as an officer.

E. NSF subsequently implemented conflict of interest requirements

21. Following the OIG’s recommendations, NSF implemented conflict of interest disclosure requirements for Engineering Research Centers. The Smart Lighting ERC Cooperative Agreement requires that “the university must screen the project for ERC faculty, Industrial Liaison Officers (ILO) and/or ERC Executive Management personnel conflicts of interest” and that “[w]hen conflicts are disclosed for any of the above three categories of personnel, the university impacted must develop a conflict management plan for each disclosure.” (EX1181 (Smart Lighting ERC Cooperative Agreement), § 5.d.(9)(v)-(vi).)

22. On July 31, 2012, Jutta Schubert filed FOIA 2012-303, requesting the “Conflicts of Interest Management Plan for the NSF Smart Lighting Engineering Research

Center (#0812056) implemented under the current Principal Investigator, Dr Robert Karlicek.” (EX1173.)

III. Dr. Schubert Knew His Testimony Was False

A. The investigation coincided with Dr. Schubert's departure from the ERC

23. In September 2008, NSF awarded \$18.5 million over five years to RPI to establish the Smart Lighting Engineering Research Center, with potential funding of up to \$50 million over ten years. (EX1190 (NSF Press Release, Sept. 2008, updated Jan. 2011), perma.cc/8XTW-F2YL; EX1191 (NSF ERC Program Description), perma.cc/7AEF-VVHV.)

24. Dr. Schubert was the Founding Director of the Smart Lighting Engineering Research Center. (EX2002.)

25. Dr. Schubert’s tenure as ERC Director ended after approximately one year. His CV lists his tenure as “2008-2009.” (EX2002.) Archived versions of the ERC website confirm that by November 2009, the website listed John Wen as Interim Director, and by March 2010, Robert Karlicek was listed as Director. (EX1184 (Internet Archive, Nov. 14, 2009), perma.cc/2UH4-FE43; EX1185 (Internet Archive, Mar. 23, 2010), perma.cc/P2RM-6Y34.)

26. The investigation case number I09020004 indicates the investigation was opened in FY 2009 (October 2008 – September 2009)—the same period Dr. Schubert departed from the ERC. (EX1169.)

27. On May 2, 2011, Dr. Schubert filed FOIA 2011-473, requesting documents concerning “a letter [that] was employed jointly by NSF and RPI in the attempt to force the first Director and PI of the Smart Lighting ERC, E. Fred Schubert, to resign.” (EX1172.)

B. Dr. Schubert and his family filed 198 FOIA requests concerning the investigation

28. Between March 2010 and July 2012, E. Fred Schubert filed 66 FOIA requests with NSF; Jutta Schubert filed 122; and Troy Research Corporation filed 10. (EX1171–1173.)

29. Twenty-two days during the FOIA campaign had three or more requests filed by family members or Troy Research Corporation. On July 21, 2010 alone, Jutta Schubert filed 15 FOIA requests. (EX1171–1173.)

30. The requests span every phase of the investigation: pre-investigation fact-gathering (March–July 2010); conflict of interest focus (July 2010); investigation documents and closeout memorandum (November 2010–March 2011); appeals and forced resignation (March–June 2011); and continued monitoring of ERC policies (through July 2012).

C. Dr. Schubert admitted in 2021 that he recalled the investigation

31. On May 13, 2021, Dr. Schubert testified at a bench trial in *Lumileds LLC v. Elec-Tech International Co.*, No. 1:12-cv-00924-MN (D. Del.). (EX1175 (Lumileds Trial Tr., May 13, 2021).) The trial concerned allegations of inequitable conduct—fraud on the patent office—against Dr. Schubert. Dr. Schubert initially testified that he was “not aware of any allegations of fraud” in connection with the ERC. (EX1175, 325:1–9.)

32. After being confronted with his FOIA requests, Dr. Schubert admitted recalling the investigation: “Yes, I recall that. And I also recall the result.” (EX1175, 326:7–13.)

D. Dr. Schubert's claimed lack of memory is not credible

33. In 2021, Dr. Schubert admitted under oath that he recalled the investigation. (*See supra* ¶¶ 31–32.)

34. In September 2025, Dr. Schubert testified that he had never been the subject of an investigation involving fraud or dishonesty. (*See supra* ¶ 2.)

35. In October 2025, shown his own FOIA request citing Investigation I09020004 by case number, Dr. Schubert testified: “I do not recall.” (*See supra* ¶ 5)

36. The 198 FOIA requests Dr. Schubert and his family filed—including requests citing the investigation by case number—establish that his claimed lack of memory is not credible. (*See supra* ¶¶ 11–14, 27–28.)

IV. Dr. Schubert’s false testimony is material

37. Dr. Schubert was asked whether he had ever been the subject of a formal investigation involving accusations of dishonesty or fraud. (*See supra* ¶ 2.) That question was asked because the answer bears directly on expert credibility.

38. The evidence establishes that Dr. Schubert was investigated for precisely such allegations—failing to disclose his interest in a family business and misusing federal funds. (*See supra* ¶¶ 9–10.)

39. The evidence further establishes that Dr. Schubert knew his answer was false. He admitted under oath in 2021 that he recalled the investigation. (*See supra* ¶¶ 31–32.) He filed 66 FOIA requests concerning the investigation, including requests citing the case number. (*See supra* ¶¶ 11–14, 28.) He could not credibly have forgotten.

40. The fact that Dr. Schubert testified he could not recall what business Troy Research Corporation was in or his wife's involvement with the company—when he founded the company with his wife and co-authored papers identifying its “trade secrets”—further undermines his credibility. (*See supra* ¶ 17.)

V. Conclusion

Petitioners request that Patent Owner withdraw Dr. Schubert’s false testimony and take appropriate remedial measures, including disclosure to the Board. We remain available to discuss this matter at your convenience.

Best regards,

/s/ David C. Radulescu

David C. Radulescu

Counsel for Petitioners

EXHIBIT LIST

Exhibit	Description
EX1048	Schubert Deposition Transcript, IPR2024-01357 (Sept. 12, 2025)
EX1169	NSF OIG Closeout Memorandum, Case No. I09020004
EX1170	NSF OIG Semiannual Report to Congress (Sept. 2011) (excerpts)
EX1171	NSF FOIA Log FY 2010
EX1172	NSF FOIA Log FY 2011
EX1173	NSF FOIA Log FY 2012
EX1175	Trial Transcript, Lumileds v. Elec-Tech, Doc. 345 (May 13, 2021)
EX1177	LinkedIn Profile of Martin Schubert
EX1178	Mont et al., J. Appl. Phys. 103, 083120 (2008)
EX1179	NASA Press Release, Rice Business Plan Competition (April 2009)
EX1181	Smart Lighting ERC Cooperative Agreement (COI provisions)
EX1182	Schubert Deposition Transcript, Elong (Oct. 10, 2025)
EX1184	Internet Archive of smartlighting.rpi.edu (Nov. 14, 2009), perma.cc/2UH4-FE43
EX1185	Internet Archive of smartlighting.rpi.edu (Mar. 23, 2010), perma.cc/P2RM-6Y34
EX1186	SBIR.gov Award Record, Award #0512690 (Troy Research Corp.), perma.cc/G63H-63UR
EX1187	Rensselaer County Property Records, 18 Ledgewood Dr., perma.cc/FS65-NAFP

EX1190	NSF Press Release, Smart Lighting ERC Award (Sept. 2008), perma.cc/8XTW-F2YL
EX1191	NSF ERC Program Description, perma.cc/7AEF-VVHV
EX1192	NSF FOIA Log, Request 11-29 (Jan. 12, 2011)
EX1193	MIT Clean Energy Prize Finalists (May 2009), perma.cc/DTZ8-7ZLQ