

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

GREENE'S ENERGY GROUP, LLC

Petitioner

v.

OIL STATES ENERGY SERVICE, L.L.C.

Patent Owner

Patent No. 6,179,053

Issue Date: August 12, 1999

Title: LOCKDOWN MECHANISM FOR WELL TOOLS REQUIRING
FIXED-POINT PACKOFF

Inter Partes Review No. IPR2014-00216

**PETITIONER'S OPPOSITION TO PATENT OWNER'S COMBINED
MOTION TO SEAL AND MOTION FOR PROTECTIVE ORDER**

I. Introduction

Pursuant to the Panel’s Order (Paper 19), Petitioner Greene’s Energy Group, LLC files this opposition to Patent Owner Oil States Energy Services, LLC’s “Combined Motion to Seal and Motion for Protective Order” (Paper 22).

II. Argument

As explained in more detail below, none of Patent Owner’s arguments support departure from the Board’s Default Protective Order. As such, Petitioner submits that the Default Protective Order should be entered, and Petitioner’s in-house counsel should have access under that Order to all “confidential” documents relied upon by Patent Owner or its Experts in support of its Motion to Amend – including the “Attorneys’ Eyes Only” designated documents.

A. The Circumstances of the *Amneal* Proceeding are Analogous

Patent Owner attempts to distinguish the present circumstances from those in the *Amneal* proceeding by arguing 1) the data involved here is financial and not clinical and 2) in *Amneal* the data deemed highly confidential had already been submitted to the FDA.

As to the first point, the fact that the underlying data is financial does not make detailed review of that data any less important in formulating a response to Patent Owner’s Motion to Amend. This is demonstrated by Patent Owner’s own Britven Declaration, which explains Mr. Britven relied on each of the “Attorneys’ Eyes

Only” Exhibits 2024-2027 as the first four items under “Documents Relied Upon.”
See Britven Decl., Exhibit 2018, Attachment 2.0. In order to fully understand and respond to Patent Owner’s proffered expert opinion, Petitioner by way of its in-house and outside counsel require access to all of the data relied upon in arriving at that opinion.

As to the second point, the fact that the data was already submitted to the FDA does not appear to have been an issue in the decision to deny departure from the Default Protective Order in the *Amneal* proceeding.

Moreover, as explained in *Amneal*, the Default Protective Order prevents employees of Petitioner other than in-house counsel from accessing the Confidential Information without approval of the Board. *See* Default Protective Order § 2(E), Office Patent Trial Practice Guide, 77 Fed. Reg. 48,756, 48,770 (Aug. 14, 2012). Patent Owner provides no rationale why such protection is not adequate for all of its financial information. In fact, Patent Owner acknowledges that Petitioner’s in-house counsel needs access to Confidential Information to manage Petitioner’s case. However, Patent Owner unilaterally and arbitrarily divides the financial information into two groups and argues that Petitioner’s in-house counsel needs access to only one of the groups. Both groups of financial information should be available to Petitioner’s in-house counsel and both groups will be protected by the Default Protective Order.

B. Disclosure of the “Attorneys’ Eyes Only” Designated Documents Will Not “significantly harm Patent Owner’s competitive position”

Patent Owner argues there will be “significant harm to Patent Owner’s competitive position” if the “Attorneys’ Eyes Only” documents are disclosed to Petitioner’s in-house counsel. Patent Owner fails to explain any circumstance under which such significant harm will occur given the limitations of the Default Protective Order.

In *Amneal*, the Patent Owner argued that Petitioner’s in-house counsel could be in a competitive decision making position regarding technical data and therefore should not have access to confidential technical data. That argument, which was rejected by the Board in *Amneal*, is not available to Patent Owner. As explained during the telephone conference with the Board on August 25, Petitioner’s in-house counsel is not involved in any competitive decision making regarding financial data and is not involved in any portion of Petitioner’s business that could possibly create any “significant harm to Patent Owner’s competitive position” by having access to Patent Owner’s financial information.

C. Petitioner will Need to Understand and Rely on the Details Underlying the Summary Information in Formulating its Response

Patent Owner asserts that Petitioner will only need to rely on the summary information – *prepared by Patent Owner* – in formulating its response. This is simply not true, as demonstrated by fact that Patent Owner’s own expert Mr.

Britven relied on all the underlying financial data. Therefore, Petitioner's in-house and outside counsel require access to all of the data relied upon in arriving at Mr. Britven's opinion in formulating its response to the Motion to Amend. Further, as a matter of logistics generally, it is unclear how in-house counsel of Petitioner can properly vet any arguments made in response to the Motion to Amend without access to the actual documents from which all of the information submitted is contained.

D. The Circumstances of the *Athena Automation* Proceeding are Not Analogous

Patent Owner attempts to analogize the present proceeding to the circumstances of the *Athena Automation* proceeding, and even goes so far as to essentially copy the proposed protective order in that proceeding in creating its proposal. However, the circumstances of the *Athena Automation* proceeding were fundamentally different than the issues faced here.

In particular, a review of briefing in that proceeding demonstrates there was a concern with regard to an employee (Mr. Schad) of a party that was *not an attorney*, and was instead a prior principal of a company that had sold the patent rights at issue. *See Athena Automation*, IPR2013-00167, Paper 27, p. 3. In fact, Mr. Schad is actually the founder and President of Athena Automation, Ltd., which is presumably a competitor to the Patent Owner in that *inter partes* review. *See Athena Automation*, IPR2013-00167, Paper 29, p. 2 at fn. 2. Petitioner in *Athena*

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