

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAKER HUGHES INCORPORATED and
BAKER HUGHES OILFIELD OPERATIONS, INC.,
Petitioners

v.

PACKERS PLUS ENERGY SERVICES INC.,
Patent Owner

Case IPR2016-00596
Patent 7,134,505

**EXCLUSIVE LICENSEE RAPID COMPLETIONS LLC'S
OPPOSITION TO PETITIONERS' MOTION SEEKING AUTHORIZA-
TION TO FILE REPLACEMENT PETITION
AND EXHIBITS AND NEW EXHIBIT**

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U.S. Patent and Trademark Office
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TABLE OF CONTENTS

- I. Introduction.....1
- II. Argument.2
 - A. Petitioners’ proposed modifications are substantive, as agreed by
Petitioners.2
 - B. No rule provides for Petitioners to obtain the requested relief.3
 - C. Rapid Completions will be prejudiced.4
- III. Conclusion.5

I. Introduction.

The single issue before the Board is whether Petitioners can amend their originally-filed Petition to substantively change the evidence they previously cited to support their alleged *prima facie* case of unpatentability related to U.S. Patent No. 7,134, 505 (“the ’505 patent”). No statute and no rule provides for the extraordinary relief requested by Petitioners, and Petitioners cite no such rule and provide no explanation of where the Board would derive the authority to permit the substantive amendment of a petition after filing. Accordingly, Petitioners should withdraw their present petition and file a new petition with the associated filing fee. And this course is the manifestly fairer course because the Patent Owner (and, in this case, Patent Owner’s exclusive licensee, Rapid Completions), will have the full period provided in the rules to assess Petitioners’ new evidence and can then file its preliminary response three months following the notice of filing date of the new petition, as provided by rule 37 C.F.R. § 42.107.

Trying to avoid involving the Board, Rapid Completions proposed a reasonable resolution to Petitioners’ conundrum: Petitioners could make the requested change to their underlying supporting evidence, but reset the filing date, the preliminary response date, and corresponding institution date, accordingly. This matter would proceed as if Petitioners had filed a new Petition. Petitioners refused Rapid Completions’ reasonable proposal. Petitioners, thus, want to avoid the finan-

cial and timing consequences of their error, yet deprive Rapid Completions of its ability to fully develop a response to the newly submitted evidence and protect their valuable property rights.

II. Argument.

A. Petitioners' proposed modifications are substantive, as agreed by Petitioners.

On February 12, 2015, Petitioners filed their petition challenging the claims of the '505 patent. To support the proposed grounds of unpatentability, Petitioners provided a copy of a document entitled "Production Control of Horizontal Wells in a Carbonate Reef Structure," marked as Exhibit 1004. Petitioners provided no additional evidence related to the publication date or public availability of Exhibit 1004. Petitioners now seek to replace the originally-filed Exhibit 1004 and to add an entirely new declaration (Exhibit 1019) that, for the first time, addresses the public availability of Exhibit 1004.

Petitioners' proposed changes are substantive—a fact that Petitioners appear now to not dispute (Motion, p. 1). Petitioners however attempt to obfuscate the substantial adverse consequences on Rapid Completions if the Board grants the instant motion. First, Petitioners state that the "only changes to the written content from original Exhibit 1004 are the paper presentation language on the first page, and five wording changes on the last two pages." (Motion, p. 4.) Petitioners mis-

state the substantive practical effects of their motion on Exhibit 1004, because the modification to the “paper presentation language on the first page” will now provide an argument that Exhibit 1004 was publicly available where there was no evidence before. Moreover, the “five wording changes” are not simple typographical corrections, but relate to discussions regarding the functionality of a plug and gas and water intake. (*See* Motion, Exhibit K, pp. 1, 8.) Second, Petitioners misrepresent that Exhibit 1019 is merely “a declaration attesting to the publication of replacement Exhibit 1004.” (*See* Motion, p. 1.) Petitioners fail to advise the Board that Exhibit 1019 includes an attachment that contains 13 additional substantive papers. And, because Exhibit 1004 allegedly comes from a conference proceeding, newly presented Exhibit 1019 becomes critical for establishing publication and public availability of Exhibit 1004—a fundamental component of Petitioners’ requirement to show a *prima facie* case of unpatentability. Petitioners’ failure to provide Exhibit 1019 with its original petition was a serious, and likely fatal, defect in their original petition—a fact effectively conceded by Petitioners in this motion.

B. No rule provides for Petitioners to obtain the requested relief.

Petitioners, as movant, bear the burden of establishing that they are entitled to the relief requested. 37 C.F.R. § 42.104(b)(4). Petitioners fail to meet this burden. No rule permits a petitioner to make substantive modifications to the originally-filed Petition, and the instant motion does not fall under the rule that allows for

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