

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 B2

NEIL T. POWELL, *Administrative Patent Judge*.

REVISED SCHEDULING ORDER

IPR2016-00596
Patent 7,134,505 B2

Much of the briefing has been completed for IPR2016-00596. Concurrent with this Order, IPR2016-01496 has been joined with this case and terminated. This Order sets forth for the joined cases a revised schedule that outlines due dates for further briefing, as well as oral argument. As outlined in detail below, some of the briefing authorized from this point forward will be limited to briefing regarding the grounds instituted in IPR2016-01496. For example, Patent Owner will have the opportunity to submit a response to the petition for IPR2016-01496, and Petitioner will have an opportunity to submit a reply to that response. Both Patent Owner's response and Petitioner's reply will be limited to the grounds instituted in IPR2016-01496. Patent Owner's previously filed response to the IPR2016-00596, as well as Petitioner's previously filed reply to that response will be applied with respect to the grounds raised by the IPR2016-00596 Petition.

A. DUE DATES

The Appendix specifies due dates for the parties to take action in this trial. The parties may stipulate to different dates for DUE DATES 6 through 11 (earlier or later, but no later than DUE DATE 12). A notice of any stipulation, specifically identifying the changed due dates, must be filed promptly with the Board. The parties may not stipulate to an extension of DUE DATES 12 and 13.

In stipulating to different dates, the parties should consider the effect of the stipulation on times to object to evidence (37 C.F.R. § 42.64(b)(1)), to supplement evidence (37 C.F.R. § 42.64(b)(2)), to conduct cross-examination (37 C.F.R. § 42.53(d)(2)), and to draft papers depending on the evidence and cross-examination testimony (*see* section D, below).

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6. *DUE DATE 6¹*

With respect to issues raised by the Petition in IPR2016-00596, each party must file any reply for a motion to exclude evidence by DUE DATE 6.

7. *DUE DATE 7*

With respect to issues raised by the Petition in IPR2016-01496, the patent owner may file—

- a. A response to the petition (37 C.F.R. § 42.120), and
- b. A motion to amend the patent (37 C.F.R. § 42.121).

The patent owner must file any such response or motion to amend by DUE DATE 7. If the patent owner elects not to file anything, the patent owner must arrange a conference call with the parties and the Board. The patent owner is cautioned that any arguments for patentability not raised and fully briefed in the response will be deemed waived.

8. *DUE DATE 8*

With respect to issues raised by the Petition in IPR2016-01496, the petitioner must file any reply to the patent owner's response and opposition to the motion to amend by DUE DATE 8.

9. *DUE DATE 9*

With respect to issues raised by the Petition in IPR2016-01496, the patent owner must file any reply to the petitioner's opposition to patent owner's motion to amend by DUE DATE 9.

¹ DUE DATES 1–5 have passed.

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10. DUE DATE 10

a. With respect to issues raised by the Petition in IPR2016-01496, each party must file any motion for an observation on the cross-examination testimony of a reply witness (*see* section E, below) by DUE DATE 10.

b. With respect to issues raised by the Petition in IPR2016-01496, each party must file any motion to exclude evidence (37 C.F.R § 42.64(c)) by DUE DATE 10.

c. Each party must file any request for oral argument (37 C.F.R. § 42.70(a)) by DUE DATE 10.

11. DUE DATE 11

a. With respect to issues raised by the Petition in IPR2016-01496, each party must file any response to an observation on cross-examination testimony by DUE DATE 11.

b. With respect to issues raised by the Petition in IPR2016-01496, each party must file any opposition to a motion to exclude evidence by DUE DATE 11.

6. DUE DATE 12

With respect to issues raised by the Petition in IPR2016-01496, each party must file any reply for a motion to exclude evidence by DUE DATE 12.

13. DUE DATE 13

Oral argument (if requested by either party) is set for DUE DATE 13.

D. CROSS-EXAMINATION

Except as the parties might otherwise agree, for each due date—

1. Cross-examination begins after any supplemental evidence is due.
37 C.F.R. § 42.53(d)(2).

2. Cross-examination ends no later than a week before the filing date for any paper in which the cross-examination testimony is expected to be used. *Id.*

The parties are reminded that the Testimony Guidelines appended to the *Trial Practice Guide*, 77 Fed.Reg. at 48,772 (App. D), apply to this proceeding. Pursuant to 37 C.F.R. § 42.12, the Board may impose an appropriate sanction on any party who fails to adhere to the Testimony Guidelines, including reasonable expenses and attorney fees incurred by a party affected by another party's misconduct.

E. MOTION FOR OBSERVATION ON CROSS-EXAMINATION

A motion for observation on cross-examination provides the parties with a mechanism to draw the Board's attention to relevant cross-examination testimony of a reply witness, because no further substantive paper is permitted after the reply. *See Trial Practice Guide*, 77 Fed. Reg. at 48,768. The observation must be a concise statement of the relevance of precisely identified testimony to a precisely identified argument or portion of an exhibit. Each observation should not exceed a single, short paragraph. The opposing party may respond to the observation. Any response must be equally concise and specific.

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