

January 19, 2017

Via Email

Anthony G. Creber
Direct 613-786-0140
Anthony.creber@gowlingwlg.com
File no. 07376787

Dalton W. McGrath, Q.C.
Blake, Cassels & Graydon LLP
3500, 855 - 2nd Street SW
Calgary AB T2P 4J8

Dear Mr. McGrath:

**Re: Court File Nos. T-1741-13, T-1569-15, T-1728-15 and T-2088-15
Written Interrogatories**

We write in following the case management conference held on January 16, 2017, where Prothonotary Aalto directed that we are entitled to ask questions relating to relevant documents that we located from Baker Hughes' US productions but that were not produced in this litigation.

As you know, the Defendants have specifically pled at paragraph 55 of the Joint Counterclaim that "the defendants have not themselves copied the alleged invention disclosed in the 072 Patent." This pleading falls under the heading of "No Commercial Success," and therefore the Defendants acknowledge that copying is relevant to commercial success.

On its face, the document enclosed with this letter (Ex.2024) contradicts your pleading, yet Baker Hughes never produced this document in the Canadian litigation. We are now left with having to proceed by written interrogatories a few weeks before trial. Our questions are set out in Appendix A to this letter. Given the urgency of this matter, we insist that you provide us with a response by Wednesday, January 25, 2017, failing which we will be writing to the Court to seek relief.

However, in an attempt to shortcut matters, we propose two alternative solutions that would obviate the need for your client to answer the questions in Appendix A:

1. Baker Hughes agrees to provide a formal admission in writing that it did copy the invention.
2. Baker Hughes admits that (a) the document enclosed with this letter is admissible at trial without further proof; (b) the document at document titled Ex.2025, which is a final installation embodiment of the invention of at least claim 9 removed "Packer Plus" in the top left corner System"; and (d) Baker Hughes' engineers related the FracPoint system.

**BAKER HUGHES INCORPORATED
AND BAKER HUGHES OILFIELD
OPERATIONS, INC.**

Exhibit 1034

**BAKER HUGHES INCORPORATED
AND BAKER HUGHES OILFIELD
OPERATIONS, INC. v. PACKERS
PLUS ENERGY SERVICES, INC.**

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On its face, the document enclosed with this letter (Ex.2024) contradicts your pleading, yet Baker Hughes never produced this document in the Canadian litigation. We are now left with having to proceed by written interrogatories a few weeks before trial. Our questions are set out in Appendix A to this letter. Given the urgency of this matter, we insist that you provide us with a response by Wednesday, January 25, 2017, failing which we will be writing to the Court to seek relief.

However, in an attempt to shortcut matters, we propose two alternative solutions that would obviate the need for your client to answer the questions in Appendix A:

1. Baker Hughes agrees to provide a formal admission in writing that it did copy the invention.
2. Baker Hughes admits that (a) the document enclosed with this letter is admissible at trial without further proof; (b) the document at page BH00363820 is a copy of the enclosed document titled Ex.2025, which is a final installation drawing from Packers Plus that depicts an embodiment of the invention of at least claim 96 of the 072 Patent; (c) Baker Hughes' engineers removed "Packer Plus" in the top left corner of the document and replaced it with "Iso-Frac System"; and (d) Baker Hughes' engineers relied on this Packer Plus document in developing the FracPoint system.

In addition, we have also noted answers from the discovery of Baker Hughes' representative, Mr. James Gambrell King, on August 12, 2016 that require correction. I asked questions of Mr. King regarding Baker Hughes' policies relating to its customers' confidential information (Q222-225 and Q235-237). Mr. King appeared to be aware of a policy and but did not know if the policy was a written policy. The Plaintiffs have since produced Baker Hughes' codes of conduct that are responsive to these questions (Plaintiffs' Production #1226-1227).

As you know, Rule 245 of the *Federal Courts Rules* requires that inaccurate or deficient answers be corrected without delay. While your client has delayed in making this correction, we believe the situation can be remedied by answering the question #25 in Appendix A relating to the Baker Hughes codes of conduct.

Yours very truly,



Anthony Creber

cc: Robert H.C. MacFarlane/Joshua W. Spicer, Bereskin & Parr LLP

Appendix A – Written interrogatories

In answering these questions, we expect that inquiries will need to be made of the following individuals who we understand are still employed at Baker Hughes: Jim Doane, Hector Mireles, Greg Badke, Doug Murray, Chuck Pleasants, Cliff Mills, Dale Cockrell, Gus Weinig, Steve Shirk, and Frank Maenza.

1. Please confirm that Exhibit 2024 (attached hereto) and entitled “Engineerring Change Notice” and consists of 34 pages was found in the files of Baker Hughes and was produced as part of the counterpart US litigation by Baker Huges.
2. Please identify Exhibit 2024 as an Engineering Change Notice relating to the development of a system to be competitive with the Packer’s Plus STackFRAC system.
3. If you deny the above question 2, please identify what Exhibit 2024 is.
4. Please identify page 13 of 34 in Exhibit 2024 as an example of Baker Hughes’s Iso-Frac system and agree to mark that page as a separate Exhibit (Baker Hughes bates number BH00363820).
5. For what purpose was Exhibit 2024 created?
6. Who created Exhibit 2024?
7. On page 5 of Exhibit 2024, it would appear that there was a meeting where at least 25 people were present at the meeting who cast votes. Please identify who these individuals were and which group or committee constituted the said design team meeting.
8. Please confirm that page 13 of 34 (of Exhibit 2024) was derived from Exhibit 2025 (attached hereto) which is a Packer’s Plus document relating to a job on a Petro Canada well site as identified as the “Shaw” site at 14-21-49-22W5.
9. Please confirm that the statement on the Packer’s Plus document Exhibit 2025 of “contains confidential information this proposal and quote is governed by Packer’s Plus general terms and conditions”, was present on the documents when it was obtained by Baker Hughes and still appears on page 13 of Exhibit 2024.
10. How, when and from whom did Baker Hughes acquire the original Packer’s Plus version of page 13 of Exhibit 2024. Provide all emails and other communications relating to Baker Hughes acquisition of the Packer’s Plus document, including any native electronic versions of the documents that Baker Hughes acquired.
11. Please confirm that the work discussed in Exhibit 2024 was part of the development of the Iso-Frac system, which eventually came to market in 2005.
12. Why was the Packers Plus’ logo removed from page 13 of Exhibit 2024 and replaced with the statement “Iso-Frac System”.

13. Why is page 13 of Exhibit 2024 marked “Confidential” by Baker Hughes?
14. Why are the other pages of Exhibit 2024 not marked “Confidential”?
15. What is the “Iso-Frac System”?
16. What is the “Open Hole Pin Point Frac System”?
17. Are the “Iso-Frac System” and “Open Hole Pin Point Frac System” early iterations of Baker Hughes’ FracPoint system?
18. Prior to October, 2004, did Baker Hughes have a system for implementing multiple hydraulic fracture treatments in an uncased, open, non-vertical wellbore in zones separated by packers that used a ball drop system to open sliding sleeves to implement the fracture treatments? If so, provide the name of the system, how it worked, who created it, and when it was created.
19. Who created the slide presentation at BH00363832 to BH00363833?
20. Where, when, and why were these slides presented?
21. Who included the information “Competition: Packer Plus: Proven System”?
22. Who created the side presentation at page 25 of Exhibit 2024?
23. Where, when, and why were these slides presented?
24. Please confirm that the information on the last slide on page 26 of 34 of Exhibit 2024 is correct, namely, that Packers Plus was perceived as the competition for this market and that Packer’s Plus was a proven system.
25. Please identify the documents attached as Exhibits 14 and 15 as the codes of conduct of Baker Hughes.