

1 UNITED STATES PATENT AND TRADEMARK OFFICE
2 BEFORE THE PATENT TRIAL AND APPEAL BOARD

3 BAKER HUGHES INCORPORATED and
4 BAKER HUGHES OILFIELD OPERATIONS, INC.
5 Petitioners
6 v.
7 PACKERS PLUS ENERGY SERVICES INC.,
8 Patent Owner

9 Case IPR2016-00596 - Patent 7,134,505
10 Case IPR2016-00597 - Patent 7,543,634
11 Case IPR2016-00598 - Patent 7,861,774
12 Case IPR2016-00650 - Patent 6,907,936
13 Case IPR2016-00656 - Patent 8,657,009
14 Case IPR2016-00657 - Patent 9,074,451

15 ORAL VIDEOTAPED DEPOSITION

16 ALI DANESHY

17 March 29, 2017

**CERTIFIED
TRANSCRIPT**

18 ORAL VIDEOTAPED DEPOSITION OF ALI DANESHY, produced
19 as a witness at the instance of the Respondent and duly
20 sworn, was taken in the above-styled and numbered cause
21 on the 29th day of March, 2017, from 9:58 a.m. to
22 3:49 p.m., before Terrilyn Paul Crowley, Certified
23 Shorthand Reporter in and for the State of Texas,
24 reported by computerized machine shorthand at the
25 offices of Norton Rose Fulbright, 1301 McKinney Street,
Suite 5100, Houston, Texas, pursuant to the Federal
Rules of Civil Procedure and the provisions stated on
the record or attached hereto.

Page 2

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17 ALSO PRESENT:

18 Mr. Anthony Matheny
Mr. Brandon Rojas, Videographer

19 Judge Daniels and Judge Capp (via telephone conference)

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10 EXHIBITS

11 (None offered)

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1 THE VIDEOGRAPHER: Going on record

2 9:58 a.m., Wednesday, March 29th, 2017. Beginning the

3 deposition of Dr. Ali Daneshy.

4 Counsel, please state their appearance

5 for the record.

6 MR. NEMUNAITIS: Justin Nemunaitis for

7 Rapid Completions, and with me is Brad Caldwell, also

8 for Rapid Completions.

9 MR. GARRETT: This is Mark Garrett for

10 Petitioners, and with me is Anthony Matheny, in-house

11 counsel for Petitioners.

12 THE REPORTER: Can you please raise your

13 right hand?

14 THE WITNESS: Before -- I need to let

15 you-all know something. I just recently had shoulder

16 surgery. Okay? So my right hand is pretty much out of

17 commission. So if during the day I frown or I, you

18 know, look something, unhappy or something, it's nothing

19 to do with what's going on here. This is -- you told me

20 to raise my right hand, and I suddenly realized there's

21 a little bit of pain in here. But go ahead, please.

22 ALI DANESHY,

23 having been first duly sworn, testified as follows:

24 EXAMINATION

25 Q. (By Mr. Nemunaitis) Can you please state your

Page 5

1 name?

2 A. Ali Daneshy.

3 Q. You're an expert hired by Baker Hughes in this

4 matter?

5 A. Yes.

6 Q. I understand you just injured your shoulder

7 recently, you were telling us?

8 A. Yes.

9 Q. I'm sorry to hear that. Sounds like a bummer.

10 Let me just ask: Are you on any kind of pain medication

11 or anything that would prevent you from giving --

12 A. No.

13 Q. -- honest testimony today?

14 A. No.

15 Q. This is your second deposition in these

16 proceedings, right?

17 A. Yes.

18 Q. Since the last time we spoke, have you spoken

19 to anyone about these IPR proceedings or these patents,

20 besides Baker Hughes' attorneys?

21 A. No.

22 Q. Now, you submitted a new report in these

23 proceedings -- or a new declaration, right?

24 A. Yes.

25 Q. In it you say that you reviewed Rapid

Page 6

1 Completions' redacted response and Mr. McGowen's
 2 redacted declaration. Do you remember that?
 3 A. Yes.
 4 Q. Did you ever review their -- the unredacted
 5 response or the unredacted McGowen declaration?
 6 A. No.
 7 Q. Did you ever ask to see those?
 8 A. No.
 9 Q. Do you think any of the information in there
 10 could have been important to your opinions in these
 11 matters?
 12 MR. GARRETT: Objection, form.
 13 A. Since I don't know what is in it, I don't know
 14 whether it would or would not be. My opinions are
 15 generally technical.
 16 Q. Do you know if there's any technical
 17 information that was redacted from those --
 18 MR. GARRETT: Same objection.
 19 Q. -- documents?
 20 MR. GARRETT: Foundation.
 21 A. No.
 22 Q. Did you ever ask about that?
 23 MR. GARRETT: Same objection.
 24 A. No.
 25 Q. You didn't think that would be important?

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1 MR. GARRETT: Same objection.
 2 A. I basically tried to respond to points that
 3 the attorneys had asked me to review and give opinions
 4 on. And those were from Mr. McGowen's testimony.
 5 That's what I did.
 6 Q. So Baker Hughes didn't ask you to respond to
 7 any of the portions of Mr. McGowen's testimony that
 8 were -- that contained the redacted material?
 9 A. No, they did not.
 10 Q. Your new report says that you were asked by
 11 Baker Hughes to rebut certain arguments from the McGowen
 12 declaration. Is that right?
 13 A. They asked my opinion about certain aspects of
 14 his declaration.
 15 Q. Did they ask you about all the opinions in his
 16 declaration or just some?
 17 A. Just some. I think. Because I don't know
 18 all -- you're telling me that there were parts of the
 19 testimony which were redacted and so on. I don't know
 20 what was in there, so I cannot tell you that I gave
 21 opinion about all of it.
 22 Q. Do you think, if you had seen the redacted
 23 material from the McGowen declaration, it could have
 24 caused you to change some of your opinions?
 25 MR. GARRETT: Objection, form,

Page 8

1 foundation.
 2 A. I don't think so.
 3 Q. Why is that?
 4 MR. GARRETT: Same objections.
 5 A. I don't know what's the other part of it, but
 6 the part that I saw that I have given opinions on, those
 7 were quite clear.
 8 Q. What about your ultimate conclusion of
 9 obviousness? If you had been presented with all the
 10 evidence in this case, including the stuff that was
 11 redacted, do you think there's any way you would have
 12 changed your opinion on whether or not these patents
 13 were obvious?
 14 MR. GARRETT: Same objection, foundation,
 15 relevance.
 16 A. I cannot give an opinion about something I
 17 don't know about.
 18 Q. So you don't -- you don't think your ultimate
 19 conclusion of obviousness would change regardless of
 20 whether or not you saw that material?
 21 MR. GARRETT: Same objections. Beyond
 22 the scope, which is 611(b). For the record, it's
 23 Federal Rule of Evidence 611(b), and I'll shorten that
 24 to just 611(b).
 25 A. I didn't think -- I don't think my opinion

Page 9

1 would have changed relative to the obviousness.
 2 Q. In your opinion, the person of ordinary skill
 3 in the art of these patents would have had about three
 4 years of experience. Is that right?
 5 A. Would have had at least three years of
 6 experience.
 7 Q. Now, you're more than just a person of
 8 ordinary skill in the art, right? You've got 50-plus
 9 years experience in the field?
 10 MR. GARRETT: Objection, beyond the
 11 scope.
 12 A. I'm an expert on hydraulic fracturing.
 13 Q. The point I'm trying to clarify is: You're
 14 envisioning that the person that's skilled in the art of
 15 these patents doesn't necessarily need to have the same
 16 level of experience as you. Is that fair?
 17 MR. GARRETT: Objection, beyond the
 18 scope.
 19 A. I don't think he needs to have as much skill
 20 as I do.
 21 Q. Now, one of the opinions in your new
 22 declaration is that the person of ordinary skill in the
 23 art of these patents would not have had ultimate
 24 responsibility over a completion project. Is that
 25 right?

Page 10

1 A. That's correct.

2 Q. You said at the -- your opinion is that the

3 person with ultimate responsibility would be someone who

4 had more experience, someone like yourself, right?

5 A. No. The person with ultimate responsibility

6 would have a higher level of authority than a POSITA.

7 Q. In forming your opinions, are you assuming

8 that the person of skill in the art can consult with

9 more experienced engineers, people like yourself, on how

10 to design a frac system?

11 MR. GARRETT: Objection, beyond the

12 scope.

13 A. Yeah, he has that ability to do that.

14 Q. So if the person of ordinary skill in the art

15 in your analysis thinks that there's some problems or

16 concerns, they can talk to a more experienced engineer

17 who can explain that there's ways to solve those

18 problems?

19 MR. GARRETT: Objection, form, beyond the

20 scope.

21 Q. Fair?

22 A. Generally, these kinds of decisions are made

23 by a group of people, and they have access to each

24 other's collective knowledge. And they, of course, can

25 always also access what's in the literature and talk to

Page 11

1 others.

2 Q. A person of skill in the art might be

3 concerned about using Thomson in the open-hole for the

4 first time, but your opinion is that that person could

5 talk to a more experienced engineer and they could get

6 rid of those concerns by giving them the benefit of

7 their experience. Is that your opinion?

8 MR. GARRETT: Objection, form.

9 A. No, that's not what I'm saying. A person of

10 ordinary skill would consider the possibility of using

11 Thomson's system in an open-hole. And then as he moved

12 forward, if there are issues that come up, they will see

13 if they can be resolved. And if they can resolve them,

14 then they continue with the process.

15 Q. Why does it matter to your opinions that a

16 person of ordinary skill in the art would not have

17 ultimate authority over a frac job?

18 MR. GARRETT: Objection, form, beyond the

19 scope.

20 A. The ultimate responsibility generally, first

21 of all, does not reside with a single person. That's

22 not the common practice in the oil and gas industry.

23 And it will reside at a higher level in the organization

24 after they have reviewed not only technical but also

25 some other data also.

Page 12

1 Q. In your analysis are you assuming that the

2 person of ordinary skill in the art is the one that has

3 to come up with a system that meets all the limitations

4 of the claims at issue?

5 MR. GARRETT: Objection, form, beyond the

6 scope, relevance, foundation.

7 A. I'm not quite clear what your question is.

8 Can you repeat that? Maybe so that I follow you,

9 please.

10 Q. In your analysis are you trying to determine

11 whether a person of skill in the art would come up with

12 a system that meets all the limitations of the claims at

13 issue?

14 MR. GARRETT: Hold on just a minute.

15 That's not limited to what's in his second declaration.

16 So if you're trying to go back and ask questions about

17 the opinions in his first declaration and not those in

18 his second declaration which concern the rebuttal of

19 certain points that Mr. McGowen made, certain arguments

20 that Rapid Completions made, then we need to talk to the

21 Board about going down that path.

22 MR. NEMUNAITIS: On this question?

23 MR. GARRETT: Yes, on that question.

24 MR. NEMUNAITIS: Let's talk to the Board

25 on this question and get it out of the way because the

Page 13

1 opinion in his rebuttal declaration was the person of

2 skill in the art could consult with engineers and they

3 would not have ultimate responsibility for the job. My

4 question is: When you're doing your analysis, given

5 that you've disclosed this new opinion, what are you

6 doing? What is your opinion based on? How does this

7 new statement in your rebuttal declaration affect your

8 conclusion of obviousness?

9 MR. GARRETT: He's rebutting a point that

10 Mr. McGowen made that underlies Mr. McGowen's opinions.

11 So if you want to ask him why did you make the point

12 that you did in rebuttal to what Mr. McGowen said and

13 reference his declaration, then we can do that.

14 But you asked him a question about

15 something basically in his original declaration. That

16 was your question. It wasn't what's in your second

17 declaration.

18 MR. NEMUNAITIS: It's obviously what's

19 based on his -- I mean, if you want to call the Board,

20 let's get out the number and do it. This seems --

21 MR. GARRETT: Let go back and look at the

22 question. "In your analysis are you trying to determine

23 whether a person of skill in the art would come up with

24 a system that meets all the limitations of the claims at

25 issue?" Where is that opinion in his second

Page 14

1 declaration?

2 MR. NEMUNAITIS: The opinion is that the

3 person of skill in the art would not have ultimate

4 responsibility for the job he's designing.

5 MR. GARRETT: How is that tied to all the

6 limitations of the claims at issue? That's not an

7 opinion he rendered in the second declaration. He's

8 talking about the ultimate responsibility for a project,

9 project management, that kind of stuff. You're now

10 trying to loop back in and get at questions that maybe

11 you should have asked in his first deposition.

12 MR. NEMUNAITIS: If he expresses an

13 opinion in his reply declaration that conflicts with or

14 seems to conflict with, as far as I can tell, opinions

15 in his original declaration, then I've got to find

16 out -- understand what the conflict is, whether or not

17 there's a conflict and understand what's going on there.

18 MR. GARRETT: Yeah, but that's not what

19 you're doing. You're asking questions about what the

20 opinions that he rendered -- actually, he didn't render

21 opinions about the ultimate conclusion of obviousness in

22 most of the opinions that he rendered if you read his

23 declaration carefully.

24 MR. NEMUNAITIS: Baker Hughes is not

25 supporting these petitions with any expert declarations

Page 15

1 stating that the claims are obvious, that's your

2 explanation?

3 MR. GARRETT: They say obviousness -- he

4 says obviousness with respect to two things. You don't

5 know what those are because you haven't read it

6 carefully, I take it. But if you look at his first

7 declaration and you look at the Thomson and Ellsworth

8 combination, I think you'll find that he does not say

9 "I'm reaching the legal conclusion that the claims are

10 obvious."

11 MR. CALDWELL: You weren't really saying

12 that Justin hasn't read it carefully, were you?

13 MR. MATHENY: That's what I heard.

14 MR. GARRETT: He wouldn't ask the

15 questions he's asking if he did.

16 MR. CALDWELL: If that's the way you like

17 your lawyers to behave, then -- let's just call the

18 Panel because I think if it's going to be at that level

19 of professionalism, let's just call the Panel. Do you

20 guys have a number for it?

21 MR. GARRETT: I've got a number we can

22 try, yeah.

23 MR. CALDWELL: Are you ready to do that?

24 MR. GARRETT: Yeah, let's do it.

25 THE VIDEOGRAPHER: Going off record

Page 16

1 10:14 a.m.

2 (Recess taken)

3 THE VIDEOGRAPHER: Going on record

4 10:17 a.m.

5 **Q. (By Mr. Nemunaitis) Would a person of skill in**

6 **the art try to design a successful fracturing system?**

7 MR. GARRETT: Objection, beyond the

8 scope.

9 A. A fracking system generally is not designed by

10 one person.

11 **Q. So your answer is no?**

12 MR. GARRETT: Objection, beyond the

13 scope.

14 A. One person --

15 MR. GARRETT: Hang on just a minute.

16 This is the same issue. I mean, these are discrete. He

17 talked about Thomson and Brown. He talked about

18 McGowen's position with respect to the operational

19 issues in Thomson. He talked about the conventional

20 wisdom, and he talked about Figure 6. Those are very

21 discrete topics that are in his second dec. These broad

22 questions are not related to those.

23 MR. NEMUNAITIS: We can try and take that

24 one up when they call as well.

25 **Q. Would a person of skill in the art be**

Page 17

1 **concerned about the risk of using Thomson's system in an**

2 **open-hole?**

3 MR. GARRETT: It's the same issue.

4 Don't answer that. No, that's fine, you

5 can answer that. Beyond the scope, but you can answer.

6 A. Yeah, he would -- he would consider all

7 possible risks. The open-hole is not -- does not really

8 pose any particular risk as such. It just imposes

9 conditions that need to be satisfied, and once those are

10 satisfied, the risk is the same as anything else.

11 **Q. Would a person of skill in the art be**

12 **interested in maximizing profitability in designing a**

13 **completion for a well?**

14 MR. GARRETT: Objection, beyond the

15 scope.

16 A. Increasing profitability is always a desirable

17 outcome of any project.

18 **Q. Is that a yes or a no?**

19 MR. GARRETT: Objection, form, beyond the

20 scope.

21 A. His main objective is not maximizing

22 profitability. His main objective is successful

23 implementation of the frac job. And, of course,

24 hopefully, the profitability also be maximized.

25 The tricky part here is maximizing

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