

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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

v.

PACKERS PLUS ENERGY SERVICES, INC.,  
Patent Owner.

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Case IPR2016-00596<sup>1</sup> (Patent 7,134,505 B2)  
Case IPR2016-00597<sup>2</sup> (Patent 7,543,634 B2)<sup>3</sup>

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NEIL T. POWELL, *Administrative Patent Judge.*

DECISION

Petitioner's Motion to Submit Supplemental Information  
*37 C.F.R. § 42.123(a)*

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<sup>1</sup> IPR2016-001496 has been joined with IPR2016-00596.

<sup>2</sup> IPR2016-001505 has been joined with IPR2016-00597.

<sup>3</sup> This Order applies to both cases. The parties are not authorized to use this style heading for any subsequent papers.

Case IPR2016-00596 (Patent 7,134,505 B2)

Case IPR2016-00597 (Patent 7,543,634 B2)

In each of these cases, Petitioner filed a Motion to Submit Supplemental Information seeking to submit certain exhibits as supplemental information “to further establish the prior art nature of Lane-Wells (Ex. 1002), Van Dyke (Ex. 1008), Baker (Ex. 1009), Lagrone (Ex. 1017), Eberhard (Ex. 1018), Howard (Ex. 1022), and Hyne (Ex. 1023).” IPR2016-01496 Paper 26<sup>4</sup> (“the Motion” or “Mot.”).<sup>5</sup> Patent Owner filed a Response to Petitioners’ Motion to Submit Supplemental Information. IPR2016-01496 Paper 27 (“Response” or “Resp.”).

Petitioner argues that each of the exhibits it seeks entered as supplemental information has been submitted in a timely manner and is relevant to a claim for which trial has been instituted. Mot. 8–12. Asserting that Patent Owner received the exhibits more than two months prior to the due date for its Patent Owner Response, Petitioner argues that entry of the exhibits will not prejudice Patent Owner. *Id.* at 13.

Patent Owner objects to entry of only one of the exhibits proffered by Petitioner—the Davis-Nichols Declaration (Ex. 1124<sup>6</sup>), which relates to the public accessibility of Lane-Wells (IPR2016-01496, Ex. 1002). Resp. 1–5. Noting that its Preliminary Response (IPR2016-01496 Paper 17) attacked Petitioner’s other evidence of public accessibility of Lane-Wells, Patent Owner argues that we should not allow Petitioner to submit new evidence that would require Patent Owner to launch a new attack on Petitioner’s

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<sup>4</sup> This paper was filed in IPR2016-01496 before it was joined with IPR2016-00596 and terminated.

<sup>5</sup> Because the issues are the same for both of the cases, we discuss and cite only the papers for IPR2016-00596 (which were filed in IPR2016-01496).

<sup>6</sup> The Motion and Response refer to this declaration as Exhibit 1024, but the declaration appears in the record as Exhibit 1124.

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public accessibility assertion. *Id.* at 1–3. Patent Owner asserts that Petitioner’s “attempted reliance on this new evidence demonstrates that the Petition itself is fatally flawed.” *Id.* at 3.

We find Petitioner’s arguments more persuasive than Patent Owner’s. We agree with Petitioner that the Motion complies with the requirements of 37 C.F.R. § 42.123(a). Additionally, consistent with Petitioner’s arguments, we do not find significant prejudice to Patent Owner from the entry of the Davis-Nichols Declaration. Contrary to Patent Owner’s argument, the Petition is not fatally flawed. As we explained when we instituted trial, Petitioner submitted evidence of public accessibility sufficient to demonstrate a reasonable likelihood of prevailing. IPR2016-01496 Paper 19, 10–13. Neither Patent Owner’s initial attack nor its attempt to reiterate that initial attack persuade us otherwise. Having submitted evidence of public accessibility sufficient to demonstrate a reasonable likelihood of prevailing, Petitioner’s response to Patent Owner’s attack with additional evidence bolstering its public accessibility contention is foreseeable, reasonable, and not unduly prejudicial to Patent Owner.

*Order*

In consideration of the foregoing, it is hereby:

ORDERED that Petitioner’s Motion to Submit Supplemental Information is *granted*.

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