

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAKER HUGHES, A GE COMPANY, LLC
and
BAKER HUGHES OILFIELD OPERATIONS LLC,
Petitioners

v.

PACKERS PLUS ENERGY SERVICES, INC.
Patent Owner

Case IPR2016-01496
Patent 7,134,505

PETITIONERS' MOTION TO EXCLUDE

Petitioners move to exclude the following exhibits and testimony pursuant to

Rule 42.64:

Ex. 2039 (Weatherford Presentation)

Objections: (1) Authentication – Federal Rule of Evidenec (“FRE”) 901(a); and
(2) Hearsay – FRE 801(c), 802.

Location of prior objections: Paper 57¹ at 1-2.

Locations exhibit is relied upon by Rapid Completions (“RC”): Patent
Owner’s Response (“POR” – Paper 56) at 23, 28-29; and, to the extent considered,
Exs. 2081/2084 at 33-51/51.

Explanation: RC has not proven authenticity. RC has not filed a declaration of
any person purporting to have personal knowledge of Ex. 2039, nor presented any
other evidence of Ex. 2039’s authenticity Therefore, Ex. 2039 should be excluded
under FRE 901.

In addition, whatever portions² of Ex. 2039 RC relies on are offered to prove
the truth of each matter asserted. On page 23 of its POR, RC cites Ex. 2039 to
support its assertion that Weatherford sells and markets a competing system using
an open hole ball drop system. Similarly, on pages 28-29 of its POR, RC cites Ex.

¹ This is Paper 57 of IPR2016-00596 (as are all papers cited in this motion)

² RC does not provide pinpoint cites in its POR, though it does reproduce a figure
on page 33/53 of Ex. 2039.

2039 to support its assertion that Weatherford's advertising and marketing documentation establishes a nexus between the Challenged claims and its alleged commercial success. However, RC has not shown that any hearsay exception applies, and has not presented the testimony of anyone with first-hand knowledge of the information from Ex. 2039 on which it relies. Therefore, Ex. 2039 (and, more specifically, whatever information from Ex. 2039 RC (through its POR or its expert's declaration) relies on) should be excluded under FRE 801(c) and 802.

Ex. 2047 (Rystad Energy report)

Objections: (1) Authentication – FRE 901(a); (2) Hearsay – FRE 801(c), 802; and (3) Relevance – FRE 401, 402, and 403.

Location of prior objections: Paper 57 at 5-6.

Locations exhibit is relied upon by RC: POR at 17, 26-27; and, to the extent considered, Exs. 2050/2051 at 45:25-29 and Exs. 2081/2084 at 26:15-27:5.

Explanation: RC has not proven authenticity. RC filed a declaration by its paralegal (Ex. 2082 at ¶¶ 1, 2), purporting to authenticate Ex. 2047 (Ex. 2082 at ¶ 11), but failed to establish a foundation that would enable Mr. Delaney to competently testify about the exhibit's authenticity. The fact that Petitioners produced Ex. 2047 in litigation is irrelevant. *See* POR at 17. Furthermore, Mr. McGowen also took no steps to authenticate or otherwise verify the Ex. 2047

information on which he relied. Ex. 1134 at 142:7-145:17.³ Therefore, Ex. 2047 should be excluded under FRE 901.

In addition, whatever portions⁴ of Ex. 2047 RC relies on are offered to prove the truth of each matter asserted. On page 17 of its POR, RC cites Ex. 2047 to support its assertion that its system was the first in the industry. *See also* Ex. 1134 at 151:5-24. Similarly, on pages 26-27 of its POR, RC cites Ex. 2047 to support its assertion that “the market for this technology ... has overtaken competing fracturing methods” in one formation and grown in other formations. *See also* Ex. 1134 at 143:1-144:21 and 148:16-151:4. However, RC has not shown that any hearsay exception applies, and has not presented the testimony of anyone with first-hand knowledge of the information from Ex. 2047 on which it relies. Therefore, Ex. 2047 (and, more specifically, whatever information from Ex. 2047 RC (through its POR or its expert’s declarations) relies on) should be excluded under FRE 801(c) and 802.

³ The exhibit discussed during this deposition – Ex. 2021 of IPR2016-00598 – is identical to Ex. 2047. Likewise, the declaration referenced by Mr. McGowen during this deposition (Ex. 2034) is identical to Ex. 2050.

⁴ RC does not provide pin cites in its POR, though its expert asserted that pages 2/14 and 10/14 were the source of his testimony. *See* Ex. 1134 at 142:7-151:24.

Finally, RC has not shown in its POR that any system or technology (or use of same) from Ex. 2047 on which it relies is covered by any Challenged Claim. *See also* Ex. 1134 at 146:4-149:14. Therefore, Ex. 2047 (and, more specifically, whatever information from Ex. 2047 RC (through its POR or its expert's declarations) relies on) is irrelevant under FRE 401 and inadmissible under FRE 402. Exhibit 2047 should also be excluded under FRE 403 because allowing RC to rely on Ex. 2047, despite RC not showing that the relied-on aspects are covered by a Challenged Claim, would be unfairly prejudicial to Petitioners.

Exs. 2050 and 2051 (unredacted and redacted McGowen Declarations)

Objections: Hearsay as to (i) each sliding sleeve, packer, and fluid conveyed sealing device name and number referenced in the claim charts of Exhibit B (to Exs. 2050/2051) that supports RC's contentions about claims 24 and 27: EX Sleeve, H80915, H80916, H80987, H80990, EX-C, H80940, H80949, EXPress, H80908, H81006, H81008, H81045, H81070, OH MP, H81027, and H81029 **for sliding sleeves**; OH Packers, H40936, RE Packers, H30187, H30192, and H30407 **for packers**; and "Balls," H81020, H81021, and H81022 **for fluid conveyed sealing devices**; and (ii) each of BH00001776, BH00125568, BH00188257, BH00125568, BH00188257, BH00001986, and BH00000949 – FRE 801(c), 802; Lack of Foundation as to (i) each sliding sleeve, packer, and fluid conveyed sealing device name and number referenced in the claim charts of Exhibit B (to

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.