

UNITED STATES PATENT AND TRADEMARK OFFICE

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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

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Case IPR2016-00598  
Patent 7,861,774

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**PETITIONERS' MOTION TO EXCLUDE**

Petitioners move to exclude the following exhibits and testimony pursuant to

Rule 42.64:

**Ex. 2021** (Rystad Energy report)

**Objections:** (1) Authentication as to entire document – Federal Rule of Evidence (“FRE”) 901(a); (2) Hearsay as to page 10/14 – FRE 801(c), 802.

**Location of prior objections:** Papers 28/37 at 3.

**Locations exhibit is relied upon by RC:** POR at 37; and, to the extent considered, Ex. 2034 (McGowen, unredacted) at 45:25-29.

**Explanation:** RC has not proven authenticity. RC filed a declaration by its paralegal (Ex. 2045 at ¶¶ 1, 2), purporting to authenticate Ex. 2021 (Ex. 2045 at ¶ 20), 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. 2021 in litigation is irrelevant. *See* POR at 27-28. Furthermore, Mr. McGowen also took no steps to authenticate or otherwise verify the information on page 10/14 of Ex. 2021 on which he relied. Ex. 1021 (McGowen deposition) at 142:7-145:17. Therefore, Ex. 2021 should be excluded under FRE 901.

In addition, the information on page 10/14 on which RC relies (POR at 37) and on which Mr. McGowen relies (Ex. 2034 (McGowen, unredacted) at 45:25-29) is hearsay because it is offered for the truth of the matter asserted – namely, that sales of certain systems were of a certain amount that reflected commercial

success. *See also* Ex. 1021 at 144:7-21. 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 presented on page 10/14 of Ex. 2021. Therefore, the information on page 10/14 of Ex. 2021 on which RC (through its POR or its expert's declaration) relies should be excluded under FRE 801(c) and 802.

**Ex. 2022** (Article Regarding Schlumberger)

**Objections:** (1) Authentication as to entire document – FRE 901(a); (2) Hearsay as to (i) the portion(s) of the document on which RC relies to establish that “the largest oil and gas service company in the world—Schlumberger—opted to work with Packers Plus to provide this technology” (POR at 29); and (ii) the portion(s) of the document on which RC relies to establish that Schlumberger “desire[d] to obtain rights to the technology” (*id.*) – FRE 801(c), 802.

**Location of prior objections:** Papers 28/37 at 3-4.

**Locations exhibit is relied upon by RC:** POR at 29; and, to the extent considered, Ex. 2034/2036 (McGowen, unredacted and redacted) at section 14.7 on page 46.

**Explanation:** RC has not proven authenticity. RC filed a declaration by its paralegal (Ex. 2045 at ¶¶ 1, 2), purporting to authenticate Ex. 2022 (Ex. 2045 at ¶ 21), but failed to establish a foundation that would enable Mr. Delaney to

competently testify about the exhibit's authenticity. Therefore, Ex. 2022 should be excluded under FRE 901.

In addition, the portion(s) of the document on which RC relies to establish that “the largest oil and gas service company in the world—Schlumberger—opted to work with Packers Plus to provide this technology” (POR at 29) are hearsay because they are offered for the truth of the matter asserted – namely, that Schlumberger opted to work with Packers Plus to provide the Packers Plus technology that RC contends is relevant to industry praise. Similarly, the portion(s) of the document on which RC relies to establish that Schlumberger “desire[d] to obtain rights to the technology” (*id.*) are also hearsay because they are offered for the truth of the matter asserted – namely, that Schlumberger desired to obtain rights to the technology, which RC asserts supports its industry praise argument. However, RC has not shown that any hearsay exception applies, and has not presented the testimony of anyone with first-hand knowledge of any agreement between Schlumberger and Packers Plus or of any Schlumberger’s “desire” relating to any such agreement. Therefore, such portion(s) of Ex. 2022 should be excluded under FRE 801(c) and 802.

**Ex. 2024 (BH00363808)**

**Objection:** Relevance – FRE 401 and 402.

**Location of prior objection:** Papers 28/37 at 4-5.

**Locations exhibit is relied upon by RC:** POR at 30-32.

**Explanation:** RC has not shown that anything in Ex. 2024 makes it more probable that Petitioners copied the claimed technology. RC relies on only two pages of this exhibit (BH00363833 and BH00363820) to assert that Petitioners obtained “a confidential Packers Plus document *while* [Petitioners] were designing their own competing system” (POR at 30 (emphasis added)) and “actually developed their own system by copying Packers Plus” (POR at 32). But RC offers no evidence of *when* Petitioners were in possession of BH00363820 or *when* Petitioners were “designing their own competing system.” Moreover, neither Petitioners’ FracPoint *system* on which RC relies or Packers Plus’s StackFRAC *system* allegedly shown in Exs. 2024 and 2025 is more similar to the system recited in any of the challenged *method* claims than is Thomson’s prior art *system*. See Petition at 22-38 (addressing Thomson’s disclosure relative to claim 1); compare Ex. 2034 claim 1 charts for StackFRAC and FracPoint systems; see also Ex. 1021 (McGowen deposition) at 64:1-65:25, 67:5-9 (StackFRAC system meets claim 1 structure), 67:22-69:23 (Thomson and StackFRAC systems are same with respect to claim 1 structure), 71:10-72:23 (Thomson and FracPoint systems are same with respect to

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