

UNITED STATES PATENT AND TRADEMARK OFFICE

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

Case IPR2016-00598
Patent 7,861,774

PETITIONERS' REPLY IN SUPPORT OF MOTION TO EXCLUDE¹

¹ This reply replaces Paper 48, and was email-authorized by the Board on June 7, 2017.

Petitioner's Exhibit List

Exhibit	Description
1001	U.S. Patent No. 7,861,774 (“the ’774 Patent”)
1002	D.W. Thomson, <i>et al.</i> , <i>Design and Installation of a Cost-Effective Completion System for Horizontal Chalk Wells Where Multiple Zones Require Acid Stimulation</i> , SPE (Society for Petroleum Engineering) 37482 (1997) (“Thomson”)
1003	B. Ellsworth, <i>et al.</i> , <i>Production Control of Horizontal Wells in a Carbonate Reef Structure</i> , 1999 Canadian Institute of Mining, Metallurgy, and Petroleum Horizontal Well Conference (“Ellsworth”)
1004	U.S. Patent No. 5,449,039 (“Hartley”)
1005	Declaration of Ali Daneshy, Ph.D. (“Daneshy1”)
1006	KATE VAN DYKE, FUNDAMENTALS OF PETROLEUM ENGINEERING (4th ed. 1997)
1007	RON BAKER, A PRIMER OF OIL WELL DRILLING (5th ed. (revised) 1996)
1008	U.S. Patent No. 4,099,563 (“Hutchison”)
1009	U.S. Patent No. 5,375,662
1010	U.S. Patent No. 6,257,338 (“Kilgore”)
1011	Excerpts of Prosecution History of the ’774 Patent
1012	U.S. Provisional Application No. 60/404,783
1013	Excerpts of Prosecution History of U.S. Patent No. 7,134,505 (“the ’505 Patent”)
1014	Declaration of Christopher D. Hawkes, Ph.D., P.Geo., regarding the proceedings of the 7th One-Day Conference On Horizontal Well Technology Operational Excellence (Canada November 3, 1999) (including Ex. 1003 at 102-110)
1015	Affidavit of Nancy Chaffin Hunter regarding the proceedings of the 10th Middle East Oil Show & Conference (Bahrain March 15-18, 1997) (including Ex. 1002 at 12/26-23/26) – NOT FILED
1016	Declaration of Rebekah Stacha regarding SPE 37482 (including Ex. 1002 at Ex. A) – NOT FILED
1017	Declaration of Rebekah Stacha regarding SPE 49523 (referencing Ex. 1002 at p. 605, fn.28) – NOT FILED

Exhibit	Description
1018	Table Associated with qrySumNetValuebyFamily from Ex. 2051 (contains PROTECTIVE ORDER MATERIAL)
1019	Affidavit of Nancy Chaffin Hunter, regarding the proceedings of the Production Operation Symposium (Oklahoma City, OK April 2-4, 1995) (including R. Coon and D. Murray, <i>Single-Trip Completion Concept Replaces Multiple Packers and Sliding Sleeves in Selective Multi-Zone Production and Stimulation Operations</i> , SPE 29539 (1995)) (“Coon”)
1020	March 1, 2017 email from Justin Nemunaitis, confirming RE Packer revenue in Ex. 1018 was included in revenue figure reported at Ex. 2034 at 42:9.
1021	Transcript of February 28, 2017 Deposition Testimony of Harold R. McGowen III (“McGowen”)
1022	Second Declaration of Ali Daneshy, Ph.D. (“Daneshy2”)
1023	P.D. Ellis, <i>et al.</i> , <i>Application of Hydraulic Fractures in Openhole Horizontal Wells</i> , SPE/Petroleum Society of CIM 65464 (2000) (“Ellis”)
1024	M.J. Rees, <i>et al.</i> , <i>Successful Hydrajet Acid Squeeze and Multifracture Acid Treatments in Horizontal Open Holes Using Dynamic Diversion Process and Downhole Mixing</i> , SPE 71692 (Sep. 30, 2001) (citing Ex. 1032 at fn. 1) (“Rees”)
1025	January 19, 2017 Letter and Written Interrogatories propounded by plaintiffs in <i>Rapid Completions LLC, et al. v. Baker Hughes Canada Co.</i> , Federal Court File No. T-1569-15) (Ottawa), regarding Canadian patent No. CA 2,412,072 (the “Related Canadian Litigation”)
1026	January 30, 2017 Letter and Responses to Ex. 1034
1027	Excerpt from February 16, 2017 transcript of Related Canadian Litigation

Ex. 2021 – Authentication: The *Lorraine* decision concerns admissibility of electronically-stored information (“ESI”). The disputed ESI appears to have been “e-mail correspondence between counsel” for an arbitration dispute between the parties (*Lorraine v. Markel American Ins. Co.*, 241 F.R.D. 534, 537 (D. Md. 2007)), not a document purportedly created by a **third party** that was produced by a party to the suit. And the page of the *Lorraine* decision cited by RC is mere *dicta*. *Id.* at 552. Regardless, Petitioners **did not create** Ex. 2021. Thus, there is no basis for the “presumption” of authenticity to which RC retreats. *See U.S. v. Brown*, 688 F.2d 1112, 1115-1116 (7th Cir. 1982) (rejecting defendant’s argument that business records **he** produced for a company of which he was president were not authentic). While Ex. 2021 does contain “Rystad Energy” markings throughout, those markings are sponsored solely by attorney argument.

Hearsay: Authenticity aside, RC’s reliance on hearsay exception (18) fails because RC cites directly to Ex. 2021 in its POR (Paper 26 at 37), rather than to Mr. McGowen’s citation to Ex. 2021 (on Ex. 2034 page 45/49). Nor does hearsay exception (17) apply; regardless of whether Ex. 2021 is a “market report,” RC has not shown that Ex. 2021 is “**generally** relied on by the **public** or by **persons** in particular occupations.” *See Fed. R. Evid.* 803(17) (emphasis added). Mr. McGowen’s **specialized** reliance (uncited by RC in its POR) does not fit the rule. Finally, RC’s purported non-truth-of-the-matter purpose for Ex. 2021 page 10—

that “persons in the field expected the patented technology to have had a significant market share” (Paper 42 at 1-2)—is improper new argument.

Rule 703: RC’s Rule 703 argument is misplaced. Paper 42 at 2-3. The rule permits otherwise inadmissible evidence to be disclosed to a jury if a court determines it has sufficient probative value in helping the jury evaluate the opinion **the evidence underlies**. But, as explained above, Ex. 2021 underlies **no opinion** by Mr. McGowen that RC relies on its POR. *See* POR at 35-40.

Ex. 2022 – Authentication: RC’s argument that this article is self-authenticating as a periodical under Rule 902 should be rejected as circular. *See TRW Automotive U.S. LLC v. Magna Electronics Inc.*, IPR2014-01347, slip op. at 7-8 (Paper 25) (P.T.A.B. Jan. 6, 2016). While the article does have “rigzone” in the URL, there is no evidence about what “rigzone” is or what “the layout” of a typical Rigzone article is. RC thus offers insufficient support for Rule 901(b)(4).

Mr. Delaney’s testimony is irrelevant because he is neither the article’s author nor someone with personal knowledge of it. Ex. 2045 at ¶¶ 1, 2, 21. Unlike RC, others have authenticated purported internet articles alleged as secondary considerations evidence with author declarations. *See Shimano Inc. v. Globberide, Inc.*, IPR2015-00273, slip op. at 18, 29 (Paper 40) (P.T.A.B. June 16, 2016).

Hearsay: Authenticity aside, RC’s reliance on hearsay exception (18) fails because RC cites directly to Ex. 2022 in its POR (Paper 26 at 29), rather than to

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