

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 IPR2016-01506
Patent 7,861,774

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 Evidence (“FRE”) 901(a); and
(2) Hearsay – FRE 801(c), 802.

Location of prior objections: Paper 53 at 1-2.

Locations exhibit is relied upon by RC: Patent Owner’s Response (“POR” –
Paper 51/52¹) at 37, 42-43; and, to the extent considered, Exs. 2081/2084 and Ex.
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 37 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 42-43 of its POR, RC cites Ex.

¹ Paper 51 is the unredacted POR and Paper 52 is the redacted POR.

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. 2044 (Vikram Rao Deposition)

Objections: (1) Hearsay –FRE 801(c), 802; (2) Relevance – FRE 401, 402, 403.

Location of prior objections: Paper 53³ at 3-4.

Locations exhibit is relied upon by RC: POR at 5-6 (citing Ex. 2044 at 78:22-79:1); POR at 50-51 (citing Ex. 2044 at 66:17-67:6); and POR at 66 (citing Ex. 2044 at 14:13-17).

Explanation: Ex. 2044 is a deposition transcript of an expert (Dr. Vikram Rao) for a non-party (Weatherford) pertaining to an expert declaration that is not an exhibit in this proceeding. Thus, as to this proceeding, Ex. 2044 is an out-of-court

³ This is Paper 53 of IPR2016-00598 (as are all papers cited in this motion, unless otherwise noted), the proceeding with which the current proceeding has been joined, and in which the Board ordered all papers for the current proceeding to be filed.

proceeding. Furthermore, Rapid Completions LLC (“RC”) relies on each portion of Ex. 2044 that it cites for the truth of the matter asserted. Specifically, RC cites Ex. 2044 at 78:22-79:1 (POR at 5-6) to support its assertion about what claim 1 requires, at 66:17-67:6 (POR at 50-51) to support its assertion about what Ellsworth discloses, and at 14:13-17 (POR at 66) to support its assertion about Dr. Rao’s job duties. Therefore, Ex. 2044 should be excluded under FRE 801(c) and 802 as inadmissible hearsay.

Petitioners did not present Dr. Rao as an expert in this proceeding, and neither party filed the declaration about which he testified as an exhibit in this proceeding. The transcript of his deposition about that declaration is therefore irrelevant under FRE 401 and inadmissible under FRE 402. Regardless, Petitioners did not have an opportunity to cross-examine Dr. Rao as Patent Owner did. Therefore, RC’s reliance on this exhibit is substantially outweighed by the danger of unfair prejudice to Petitioners and should be excluded under FRE 403.

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 53 at 6-7.

Locations exhibit is relied upon by RC: POR at 30-31, 40; 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 30. Furthermore, Mr. McGowen also took no steps to authenticate or otherwise verify the Ex. 2047 information on which he relied. Ex. 1131 at 142:7-145:17.⁴ Therefore, Ex. 2047 should be excluded under FRE 901.

In addition, whatever portions⁵ of Ex. 2047 RC relies on are offered to prove the truth of each matter asserted. On pages 30-31 of its POR, RC cites Ex. 2047 to support its assertion that its system was the first in the industry. *See also* Ex. 1131 at 151:5-24. Similarly, on page 40 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.

⁴ 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.

⁵ RC does not provide pinpoint cites in its POR, though its expert asserted that pages 2 and 10 of 14 were the source of his testimony. *See* Ex. 1131 at 142:7-151:24.

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