Paper No 69

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 FOR LEAVE TO FILE UPDATED MANDATORY NOTICES

I. STATEMENT OF PRECISE RELIEF REQUESTED

On September 25, 2017, the Board authorized Petitioners to file a motion for leave to file, outside the 21-day period specified in Rule 42.8(a)(3), updated mandatory notices listing General Electric Company ("General Electric") as a real party-in-interest, pursuant to Petitioners' emailed request to the Board of August 25, 2017. Petitioners request that the Board authorize the filing under one or more of Rules 42.5(b), (c)(1), and (c)(3) because it will promote efficiency, there will be no resulting prejudice to Rapid Completions LLC ("Rapid Completions," acting entity in this proceeding) or Patent Owner, and the Board will have sufficient time to address any potential conflicts.

II. FULL STATEMENT OF THE REASONS FOR THE RELIEF REQUESTED

A. Background

On July 3, 2017, Baker Hughes Incorporated was converted into Baker Hughes, a GE Company, LLC ("BHGE, LLC"). *See* Paper 60 filed in IPR2015-00598. On July 24, 2017, Petitioners filed updated mandatory notices, reporting this conversion and adding Baker Hughes, a GE Company ("BHGE")—a publicly traded company that became a partial owner of BHGE, LLC following the conversion—as a real party-in-interest (RPI) under Rule 42.8(b)(3). *See id.*

Following the conversion, General Electric (a publicly traded company) became a partial owner of both BHGE, LLC and BHGE. However, when those

updated mandatory notices were filed, a good faith determination was made by the undersigned that General Electric was not an RPI.

That determination has not changed, but Petitioners now seek to file updated mandatory notices adding General Electric as an RPI to eliminate any RPI issue from this proceeding, and not as a concession that General Electric is, in fact, an RPI.

As reflected in Petitioners' August 25, 2017 email to the Board, Rapid Completions has indicated it believes the petition in this proceeding should be dismissed based on Petitioners' "failure" to make this request within 21 days after July 3, 2017.

B. No Prejudice to Rapid Completions

The requested change does not alter any of the grounds on which trial was instituted. It also expressly subjects General Electric to the estoppel provisions of Section 315 of Title 35, benefitting Rapid Completions (and Patent Owner). *See Aerospace Communications Holdings Co. v. Armor All/Step Products Co.*, Case IPR2016-00441, slip op. at 6 (P.T.A.B. June 28, 2016) (Paper 12).

C. This Issue Is Not Jurisdictional

Rapid Completions' indication that the petition should be dismissed based on Petitioners' request being more than 21 days after July 3, 2017 is not consistent with the Board's precedential decision of *Lumentum Holdings, Inc. v. Capella*

Photonics, Inc., Case IPR2015-00739, slip op. at 4-6 (P.T.A.B. Mar. 4, 2016) (Paper 38) (precedential). There, the Petition was filed on February 14, 2015, and identified the petitioner as the sole RPI. *Id.* at 2. Prior to institution, the petitioner was renamed and additional entities became RPIs related to a reorganization. *Id.* However, the Petitioner did not seek to amend its mandatory notices until a few weeks after the August 25, 2015 institution decision, and outside of the 21-day period specified in Rule 42.8(a)(3). *Id.* at 2-3.

The Board authorized the Patent Owner to file a motion to terminate the proceeding, in which the Patent Owner argued that the Petitioner failed to meet the requirement of Section 312(a)(2), thereby depriving the Board of jurisdiction to institute trial. *Id.* at 3-4. The Board denied the motion to terminate, ruling that a lapse in a petitioner's compliance with the requirements of Section 312(a) "does not deprive the Board of jurisdiction over the proceeding, or preclude the Board from permitting such lapse to be rectified." *Id.* at 5.

Here, and assuming (for the sake of argument) that Section 312 applies to the Board's consideration of the petition after institution, at least the same reasoning supports the Board's consideration of Petitioners' request.

D. The Board Has Time to Address Any Potential Conflicts

As explained in the Trial Practice Guide, one of the "core functions" of the requirement to identify RPIs is "to assist members of the Board in identifying

potential conflicts." 77 Fed. Reg. 48756, 48759 (Aug. 12, 2012). Given that August 25, 2017 is at least two months prior to the oral hearing date for this proceeding, Petitioners respectfully submit the Board has sufficient time to make this assessment. *See Valeo North America, Inc. v. Magna Electronics, Inc.*, Case IPR2014-00220, slip op. at 4 (P.T.A.B. Jan. 8, 2015) (Paper 45) (granting Petitioner's late updated mandatory notices request that occurred two months to two months and one day prior to oral hearings).

III. CONCLUSION

Petitioners' respectfully request that the Board exercise its authority under Rule 42.5 and grant Petitioners' request to file updated mandatory notices, adding General Electric as a real party-in-interest, outside the 21-day time period specified in Rule 42.8(a)(3). Granting this request will promote efficiency by precluding any need for the Board or parties to expend effort and expense litigating whether General Electric is an RPI. Denying this request—which does not seek to change the substance of the case, and which leaves the Board with adequate time to address any potential conflicts—would produce a result contrary to the interests of justice. *See Lumentum Holdings*, slip op. at 5.

Dated: September 29, 2017

Respectfully submitted,

/Mark T. Garrett/
Mark T. Garrett

DOCKET ALARM

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.