UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

BAKER HUGHES INCORPORATED and
BAKER HUGHES OILFIELD OPERATIONS LLC,
Petitioners

v.

PACKERS PLUS ENERGY SERVICES INC.,
Patent Owner

Case IPR2016-00598
Patent 7,861,774

EXCLUSIVE LICENSEE RAPID COMPLETIONS LLC'S RESPONSE TO PETITIONERS' MOTION FOR LEAVE TO FILE UPDATED MANDATORY NOTICES

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The issue currently before the Board is whether Petitioners have demonstrated good cause to amend their mandatory notices after the 21-day deadline, or whether allowing the amendment is in the interests of justice. 37 CFR § 42.5(c)(3). In evaluating whether good cause exists, the Board must consider: (1) Petitioners' excuse for the delay, (2) the importance of the proposed amendment, and (3) the potential prejudice to the non-moving party.

In evaluating the reason for delay, a movant will typically offer some explanation as to why it missed a deadline, even if it was merely inattention to the deadline. Here, Petitioners offer no such explanation. Instead, they contend that they made a conscious decision not to amend their mandatory notices within the 21-day period. Mot. at 2 ("a good faith determination was made by the undersigned that General Electric was not an RPI"). And they also contend that, after the deadline lapsed, nothing changed to make them believe that they made the wrong decision. Mot. at 2 ("That determination has not changed"). These two statements cannot both be correct. There must be some explanation as to why Petitioners failed to meet the deadline, and now contend that GE should be named as an RPI. Their failure to provide that explanation should tip this factor against granting the motion.

With regard to the importance of the proposed amendment, the requirement that a petitioner name all RPIs is important. The IPR process affords patent

owners only limited discovery into this issue. Thus, for the system to work properly, petitioners must be forthright about naming RPIs. While the penalty of dismissal may be harsh in some cases, it is necessary to ensure proper compliance with the rules.

The final factor, prejudice to the non-moving party is difficult to determine. It is still not clear why Petitioners changed their mind regarding naming GE as an RPI. At any rate, Petitioners' failure to offer an excuse for their delay, and the importance of ensuring compliance with the requirement that a petitioner name all RPIs should weigh in favor of denying the present motion.

Petitioners reliance on *Lumentum* is inapposite. *Lumentum* does hold that the Board retains jurisdiction to rule on a motion to amend mandatory notices after the 21-day deadline. But that is beside the point. Certainly, if the Board determines that good cause exists for Petitioners to add GE as an RPI, then they have cured the defect in their petition such that the proceedings should continue. However, if the Board determines that Petitioners lack good cause such that the present motion should be denied, then the petitions are defective for failing to name all RPIs. As a result, the Board should dismiss the petitions. *See, e.g.*, *Atlanta Gas Light Co. v. Bennett Regulator Guards, Inc.*, IPR2013-00453, Paper 88 at 14-15 (PTAB Jan. 6, 2015) (dismissing petition where petitioner could not cure its failure to name all RPIs because the one year filing bar had passed).

Dated: October 30, 2017

Respectfully submitted,

Rapid Completions LLC

By */Justin T. Nemunaitis/*
Hamad M. Hamad, Reg. No. 64,641
Bradley W. Caldwell (pro hac vice)
Justin T. Nemunaitis (pro hac vice)
CALDWELL CASSADY CURRY, P.C.
2101 Cedar Springs Road, Suite 1000
Dallas, Texas 75201
Telephone: 214.888.4848
Facsimile: 214.888.4849
hhamad@caldwellcc.com
bcaldwell@caldwellcc.com
jnemunaitis@caldwellcc.com
rapid@caldwellcc.com

Dr. Gregory Gonsalves, Reg. No. 43,639
GONSALVES LAW FIRM
2216 Beacon Lane
Falls Church, Virginia 22043
Telephone: 571.419.7252
gonsalves@gonsalveslawfirm.com

CERTIFICATION OF SERVICE

The undersigned hereby certifies that the foregoing document was served electronically via e-mail in its entirety on the following counsel of record for Petitioner:

Mark T. Garrett (Lead Counsel)
Eagle H. Robinson (Back-up Counsel)
NORTON ROSE FULBRIGHT US LLP
mark.garrett@nortonrosefulbright.com
eagle.robinson@nortonrosefulbright.com

Date: October 30, 2017

/Hamad M. Hamad/
Hamad M. Hamad, Reg. No. 64,641