

UNITED STATES PATENT AND TRADEMARK OFFICE

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BEFORE THE PATENT TRIAL AND APPEAL BOARD

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BAKER HUGHES INCORPORATED and  
BAKER HUGHES OILFIELD OPERATIONS, INC.,  
Petitioners

v.

PACKERS PLUS ENERGY SERVICES INC.,  
Patent Owner

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Case IPR2016-01506  
Patent 7,861,774

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**EXCLUSIVE LICENSEE RAPID COMPLETIONS LLC'S  
RESPONSE TO PETITIONERS' MOTION TO SUBMIT  
SUPPLEMENTAL INFORMATION**

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Alexandria, VA 22313-1450

Before the Board is Petitioners' Motion to Submit Supplemental Information with respect to proposed exhibits 1023-1028. Respondent opposes the motion only with respect to Exhibit 1023.

Under 37 C.F.R. § 42.123, a party may file a motion to submit supplemental Information, but such a motion is not granted as a matter of course. Rather, the movant bears the burden of demonstrating that it is entitled to the requested relief. For example, a movant may fail to meet its burden if it fails to show that the proposed supplemental evidence was unavailable at the time the Petition was filed. Similarly, a movant fails to meet its burden if the supplemental information introduces new theories or arguments not present in the original Petition. *See Redline Detection, LLC v. Star Envirotech, Inc.*, IPR2013-00106, Paper 24 at 5 (PTAB August 5, 2013). After all, a Petitioner is required to submit all affidavits or declarations supporting a petition with the petition itself. 35 U.S.C. § 312(a)(3)(B).

One of the key issues in this proceeding is whether the asserted Lane-Wells reference qualifies as prior art. The Petition is silent as to why Petitioners contend that Lane-Wells qualifies as prior art. However, Petitioners did submit the declaration of Margaret Kieckhefer, which asserted that the reference is stored in the Library of Congress. The Panel credited this fact when it instituted review. IPR2016-01506, Institution Decision at 8. Respondent has since explained that the

mere fact that a document is stored in the Library of Congress is insufficient to qualify the document as prior art. Mot. Reconsider at 9-11.

In response to Respondent's criticisms of their prior art theory, Petitioners now offer the declaration of Velma J'Nette Davis-Nichols (Ex. 1023) as supplemental evidence allegedly establishing Lane-Wells as prior art. Ms. Davis-Nichols is not an employee of the Library of Congress and she offers no testimony related to the practices of the Library of Congress. Indeed, Petitioners appear to have abandoned any prior art theory based on Lane-Wells' location in the Library of Congress as they have not offered any supplemental evidence as to how Lane-Wells is accessible or searchable within the Library of Congress. If Exhibit 1023 is relevant at all, it would only be to support some as yet undisclosed new theory as to why Lane-Wells is prior art based on the actions of Gulf Publishing Company LLC, not the Library of Congress.

Petitioners offer no excuse as to why exhibit 1023 could not have been submitted with the Petition. The present motion is not an opportunity for Petitioners to change theories or make arguments that they wish they had made when they filed their petition. If Petitioners were allowed to submit this evidence now, the result would be prejudicial to Respondent. Respondent is currently working to prepare its Patent Owner Response based on the theories espoused in the Petition. Allowing this new evidence now would require Respondent to

theorize as to what new arguments Petitioners may make in their reply as to why this evidence establishes Lane-Wells as prior art,<sup>1</sup> and then to investigate and take discovery regarding the sales and library practices of an entirely new entity—Gulf Publishing Company LLC. That result is unfair to Respondent and contrary to the goals of *inter partes* review.

Petitioners’ attempted reliance on this new evidence demonstrates that the Petition itself is fatally flawed. Petitioners must live with that flaw; now is not the

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<sup>1</sup> This is no small task. Petitioners assert that Ex. 1023 proves that Lane-Wells was “published, searchable, and available to the public.” However, Exhibit 1023 provides no evidence as to how Lane-Wells was “searchable.” Indeed, this declaration suffers from the same defects as the Kieckhefer declaration. Similarly, although Ms. Davis-Nichols testifies that Gulf Publishing allowed individuals to request access to copies of composite catalogs, it is unclear if Petitioners assert that this vague assertion establishes Lane-Wells as publicly available. In short, Exhibit 1023, on its face, does not establish Lane-Wells as prior art under any well known precedent. It is unclear what case law and factual inferences Petitioners are relying on to support their conclusion that this exhibit establishes Lane-Wells as prior art.

time for a do-over. Accordingly, Respondent respectfully requests that the present motion be denied with respect to exhibit 1023.

Dated: March 17, 2017

Respectfully submitted,

*Rapid Completions LLC*

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