

UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE PATENT TRIAL AND APPEAL BOARD

**WEATHERFORD INTERNATIONAL, LLC;
WEATHERFORD/LAMB, INC.;
WEATHERFORD US, LP; and WEATHERFORD
ARTIFICIAL LIFT SYSTEMS, LLC**

Petitioners

v.

PACKERS PLUS ENERGY SERVICES, INC.,

Patent Owner

***Inter Partes* Review No. IPR2016-01509
Patent 7,861,774**

**PETITIONERS' OBJECTIONS TO PATENT OWNER'S EXPERT
DECLARATIONS PURSUANT TO 37 C.F.R. § 42.64(b)(1)**

Under the Federal Rules of Evidence and 37 C.F.R. § 42.64, Petitioners Weatherford International LLC, et al. (hereinafter, “Petitioners”) timely¹ object to evidence submitted by Exclusive Licensee Rapid Completions (hereinafter, “Patent Owner”) in the form of expert testimony of Harold E. McGowen, III. Petitioners serve Patent Owner with these objections to provide notice that Petitioners may move to exclude the challenged exhibits under 37 C.F.R. § 42.64(c) unless Patent Owner cures the defects associated with the challenged exhibit identified below.

Exhibits 2051 and 2081

Exhibit 2051 is the December 2, 2016 expert declaration of Harold E. McGowen, III. In section 14.4 of Exhibit 2051, Mr. McGowen expresses opinions regarding alleged commercial success of the ’774 claims based on alleged sales of embodiments of the ’774 claims by Baker Hughes. Ex. 2051 at 45-46 of 94. Similarly,

¹ Petitioners note that the present Objections are timely as they are being served and filed within five business days of receipt of the official transcript of the Oral Deposition of Harold E. McGowen III, filed on August 16, 2017 as Exhibit 1038. The basis under which Petitioners object to Exhibits 2051 and 2081 came to light during Mr. McGowen's deposition. *See, e.g.*, Ex. 1038 at 163:8-25. Furthermore, Petitioners previously reserved the right to object to Exs. 2051 and 2081 pending this deposition. Paper 34 at 5, 18.

in Exhibit 2081, which is the May 31, 2017 expert declaration of Harold E. McGowen, III, Mr. McGowen again opines on alleged commercial success of Baker Hughes's systems in section 11.2. Ex. 2081 at 25-27 of 42.

Petitioners object to section 14.4 of Exhibit 2051 and section 11.2 of Ex. 2081 under Federal Rules of Evidence 702 and 705 because Mr. McGowen testified at his deposition that he bases his opinions on alleged commercial success by Baker Hughes on internal Baker Hughes data that is not available to Petitioners in violation of Federal Rule of Evidence 705. McGowen Tr. at 163:8-25 (Ex. 1038, filed on August 16, 2017). Thus, Mr. McGowen's opinions provided in section 14.4 of Exhibit 2051 and section 11.2 of Ex. 2081 are inadmissible because his declarations do not set forth the basis for his opinions of commercial success based on Baker Hughes's sales and because the basis for those opinions has not been produced, such that Petitioners have no way to adequately cross examine Mr. McGowen on these opinions; *Riffenburg by Riffenburg v. Michigan*, No. 5:96-cv-99, 1998 U.S. Dist. LEXIS 15622, at *56 (W.D. Mich. Sept. 3, 1998) (“The Riffenburgs also fail to grasp that the court can and will require the facts underlying any such opinion to be disclosed, pursuant to Fed. R. Evid. 705. Our adversary system does not entitle a party to retain the ‘confidentiality’ of data supporting opinion testimony.”); *see also* PTAB Trial Practice Guide § II(A)(4) (“Affidavits expressing an opinion of an expert must disclose the underlying facts or data upon which the opinion is based.”); 37 C.F.R. § 42.65. Additionally, because

Patent Owner has failed to produce the facts and data underlying Mr. McGowen's opinions regarding alleged commercial success by Baker Hughes, Patent Owner cannot establish that the opinions are based on sufficient facts or data, that the opinions are the product of reliable principles and methods, or that the expert has reliably applied the principles and methods to the facts of this case. As a result, Patent Owner cannot establish that Mr. McGowen's expert testimony regarding alleged commercial success by Baker Hughes is admissible under Federal Rule of Evidence 702.

Petitioners also object to section 14.4 of Ex. 2051 and section 11.2 of Ex. 2081 as being irrelevant under Fed. R. Evid. 401 and thus inadmissible under Fed. R. Evid. 402, or as being confusing or a waste of time under Fed. R. Evid. 403 because these expert opinions are inadmissible under Fed. R. Evid. 702, would be prejudicial if admitted, and are not otherwise admissible evidence.

Dated: August 17, 2017

Respectfully submitted,

/Jason Shapiro/
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Counsel for Petitioners

CERTIFICATE OF SERVICE

I certify that the foregoing **PETITIONERS' OBJECTIONS TO PATENT OWNER'S EXPERT DECLARATIONS PURSUANT TO 37 C.F.R. § 42.64(b)(1)** and the present **CERTIFICATE OF SERVICE** were served August 17, 2017 via electronic mail, as previously consented to by Patent Owner, upon the following counsel of record:

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