

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' MOTION TO EXCLUDE
EVIDENCE UNDER 37 C.F.R. § 42.64(c)**

TABLE OF AUTHORITIES

Cases

Rapid Completions LLC v. Baker Hughes Inc., No. 6:15-cv-724, slip op. (E.D. Tex. Feb. 17, 2017).....6

Riffenburg by Riffenburg v. Michigan, No. 5:96-cv-99, 1998 U.S. Dist. LEXIS 15622 (W.D. Mich. Sept. 3, 1998).....4

Sanchez v. Boston Sci. Corp., No. 2:12-cv-05762, 2014 U.S. Dist. LEXIS 137189 (S.D.W. Va. Sept. 29, 2014)5

Sims v. Kia Motors of Am., 839 F.3d 393 (5th Cir. 2016)6

Rules

37 C.F.R. § 42.641, 7, 15

Fed. Rule Evid. 4018, 9, 10

Fed. Rule Evid. 702.....3, 5, 6, 7

Fed. Rule Evid. 705.....passim

Fed. Rule Evid. 802.....passim

Fed. Rule Evid. 803.....11

Fed. Rule Evid. 9017

Office Patent Trial Practice Guide, 77 Fed. Reg. 48,7564

Pursuant to 37 C.F.R. § 42.64(c), Petitioner moves to exclude the Patent Owner (“PO”) Exhibits listed below. Petitioner provides the following numerical listing of where the exhibits and the objections thereto appear in the record. Explanations of why each of these exhibits should be excluded follows thereafter.

Exhibit	Where Cited	Where Objected To
2004	Preliminary Response, paper 18 (“POPR”) at 27-28; Response, paper 32 (“POR”) at 29	Objections to POPR Evidence, paper 27 (“POPR Objections”) at 3-4
2005	POPR at 26-27; POR at 28	POPR Objections at 4-5
2006	POPR at 25; POR at 28	POPR Objections at 6-7
2007	POPR at 27; POR at 29	POPR Objections at 7-8
2008	POPR at 25-26; POR at 28	POPR Objections at 8-10
2009	POPR at 26	POPR Objections at 10-11
2010	POPR at 28-31; POR at 14-15, 25-26, 39-40	POPR Objections at 11-12
2011	Not cited	POPR Objections at 13
2012	Not cited	POPR Objections at 14
2013	POPR at 29, 34; POR at 23, 30	POPR Objections at 15-16
2014	POPR at 34; POR at 22, 64	POPR Objections at 16-18
2015	POR at 23-25	POPR Objections at 18-19

2016	POPR at 24, 29, 31-34; POR at 6, 13-14, 17, 35, 40, 54-55	POPR Objections at 19-20
2017	POPR at 24; POR at 24, 34-35	POPR Objections at 20-21
2018	POPR at 24; POR at 31-35, 41-42	POPR Objections at 22-23
2019	POPR at 24, 28; POR at 31-35, 38-39, 41-42	POPR Objections at 23-24
2020	POPR at 27; POR at 28	POPR Objections at 24-25
2045	POR at 29	Objections to POR Evidence , paper 34 ("POR Objections") at 1-2
2046	POR at 29	POR Objections at 2-3
2047	POR at 30, 39-40	POR Objections at 3-4
2051	POR at 6, 12, 14-16, 24-26, 34, 39, 41, 52-54, 64	Objections to Expert Declarations, paper 40 ("Expert Objections") at 1-3; Ex. 1038 at 164:1-3
2052	POR at 31-33	POR Objections at 5-6
2053	POR at 33	POR Objections at 6
2054	POR at 30-31	POR Objections at 7-8
2055	POR at 36	POR Objections at 8
2058	POR at 2, 3, 34, 35	POR Objections at 11-12

2059	POR at 35	POR Objections at 12
2061	POR at 27	POR Objections at 13-14
2081	POR at 39, 45, 47, 48, 55, 60	Expert Objections at 1-3; Ex. 1038 at 164:1-3
2083	Not cited	POR Objections at 18
2085	POR at 14-15	POR Objections at 18-20
2086	Not cited	POR Objections at 20-21
2087	Not cited	POR Objections at 21-22
2088	Not cited	POR Objections at 22
2089	Not cited	POR Objections at 22-23
2091	Not cited	POR Objections at 23
2097	POR at 34	POR Objections 24-25

I. Improper Expert Testimony

Petitioners move to exclude section 14.4 of Exhibit 2051 and section 11.2 of Ex. 2081, both of which are expert declarations of Mr. Harold McGowen, under Federal Rules of Evidence 702 and 705 and the Board’s Trial Practice Guide because McGowen’s opinions in these sections are based on internal Baker Hughes data that has not been produced by PO. PO relies on McGowen’s opinions regarding commercial success in an effort to rebut Petitioners’ assertion of obviousness. POR at 38-39. Petitioner timely objected to these declarations after they were submitted,

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